State Of California The Resources Agency of California

Memorandum

Date : February 29, 2000
Telephone:

To : Participants in the Commission's Review of the Siting Process

File:

From : California Energy Commission -
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **SITING COMMITTEE'S PROPOSED REPORT ON IMPROVEMENTS TO THE ENERGY COMMISSION'S ENERGY FACILITY SITING PROCESS**

Attached is the Siting Committee's Proposed Report on Improvements to the Energy Commissions Energy Facility Siting Process. The Siting Committee has prepared the Proposed Report in response to the direction of the Legislature in Senate Bill 110 to evaluate and recommend administrative and statutory measures that, preserving environmental protections and public participation, would improve the Commission s siting and licensing process to insure the timely construction of new electricity generation capacity in California in the deregulated electricity Market. The Proposed Report will be considered for adoption by the full Commission at the Commission Business Meeting on March 15, 2000 at the California Energy Commission in Sacramento. Any written comments which you may have on the Proposed Report should be provided, by March13, 2000, to Chris Tooker, Siting Office, MS 15, Energy Facilities Siting and Environmental Protection Division, California Energy Commission, 1516 9th Street, Sacramento, CA 95814-5512. Verbal comments can be provided at the Business Meeting.

The Siting Committee would like to express its appreciation to the many stakeholders who participated in and contributed to the evaluation of the Commission s siting process through participation in our workshops and public hearings and in providing written comments on the siting process.

_____
ROBERT A. LAURIE
Commissioner and Presiding Member
Energy Facility Siting Committee

_____
ROBERT PERNELL
Commissioner and Associate Member
Energy Facility Siting Committee

Attachment

COMMITTEE REPORT

REPORT ON IMPROVEMENTS TO THE ENERGY COMMISSION'S ENERGY FACILITY SITING PROCESS

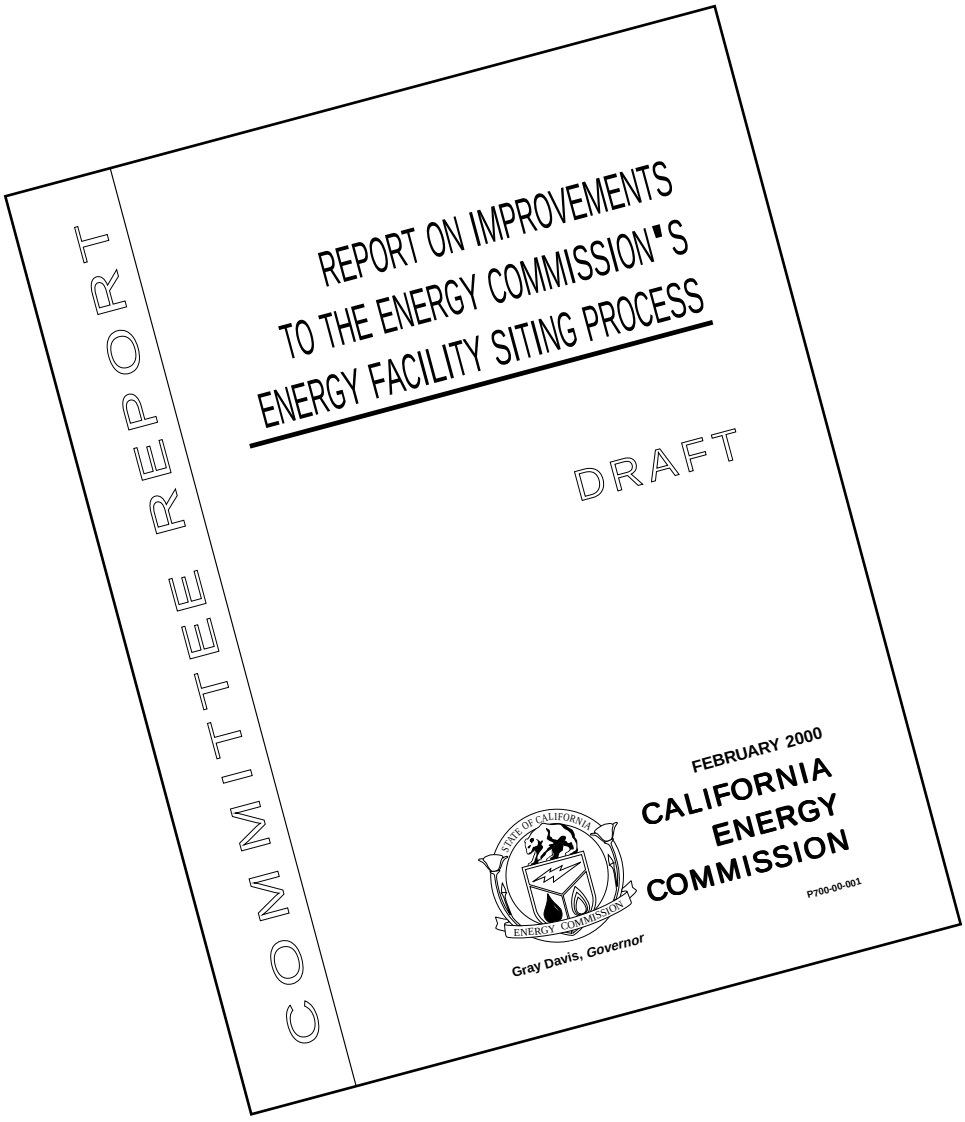
DRAFT

FEBRUARY 2000

CALIFORNIA ENERGY COMMISSION

Gray Davis, *Governor*

P700-00-001



CALIFORNIA ENERGY COMMISSION

SITING COMMITTEE

Robert A. Laurie, *Presiding Member*
Robert Pernell, *Associate Member*

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ENERGY FACILITIES SITING & ENVIRONMENTAL PROTECTION DIVISION

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EXECUTIVE SUMMARY

The State s one stop energy facility permitting process was established in the mid-1970 s, in the context of a regulated electric utility industry, to provide time-certain and legally sustainable permitting decisions while protecting the environment and public health, as well as facilitating public participation in the decision-making process. With the passage of SB110 in 1999, the Legislature directed the Energy Commission to evaluate and recommend administrative and statutory measures that, preserving environmental protections and public participation, would improve the Commission s siting and licensing process to insure the timely construction of new electricity generation capacity in California in the deregulated electricity market. [Public Resources Code Section 25543 (PRC／25543) (b)].

In response to the Legislature s direction, this report evaluates potential siting process efficiencies; the impacts of restrictions on communication within the process on process efficiencies and public participation; means for improving agency coordination in the process; and Commission organizational structure issues related to the support of the siting process. It also discusses issues of permitting jurisdiction as they affect the effectiveness and efficiency of licensing energy facilities in California**.** In developing its recommendations for changes to the siting process, the Commission focused first on opportunities for using its existing administrative and statutory authorities more effectively to improve the process. Only where more substantive changes are required does the Commission recommend administrative or statutory changes to improve the efficiency and effectiveness of the siting process in the new electricity market environment.

As a result of its evaluation, the Commission has verified that the siting process is fundamentally sound and provides an efficient method for licensing large power plants and related transmission lines in California. The only fundamental change in the process the Commission currently recommends is the development of a more efficient, expedited, single-step licensing process to replace the Small Power Plant Exemption (SPPE) process.

Opportunities for improving the efficiency of the Application for Certification (AFC) process in the context of the competitive electricity market include updating the information requirements for facility applications, requiring site control, instituting specific process timeframes, and increasing the flexibility for evaluating project changes.

The Commission believes that public participation and communication between all participants in the process can be improved by dropping meeting noticing requirements for all parties except staff, and streamlining the noticing requirements for meetings between staff and other parties. More effective public participation can also be promoted by increasing the use of early public scoping sessions to identify

and resolve issues, providing specific responses to public comments in staff and Commission documents, and clarifying the role of the public in Commission hearings.

State and local agency participation in the siting process can be improved by establishing a specific timeframe for the filing of agency comments, minimizing overlap between agency and staff analyses, improving application filing requirements (data adequacy) to support agency needs, and providing adequate time for agencies to evaluate project changes. Providing CEQA documentation earlier in the process for local agencies to make land use decisions, where needed, can also improve the efficiency of the process. Clarification is needed of how and under what circumstances, in the deregulated electricity market, the Commission would override regulatory, land use or CEQA requirements in approving project applications.

Based on an evaluation of the present use of its organization and resources, the Commission concludes that any surplus resources created by the recent elimination of the need analysis in the siting process have already been redirected or eliminated. If fees are imposed on applicants for processing AFCs, they should be managed to allow adequate funding to maintain a baseline level of trained staff, regardless of the workload.

The Commission also concludes that its permitting jurisdiction should be expanded to include all transmission lines to better facilitate a competitive electricity market.

The Commission is continuing to make changes in the siting process within its existing authority to better adapt it to the competitive electricity market. As directed by SB 110, the Commission has initiated an Order Instituting Rule Making (OIR) to immediately adopt many of the administrative changes recommended in this report. The Commission will also hold workshops with stakeholders to develop an expedited permitting process to replace the SPPE, and to develop a regimen to provide more timely environmental documentation for addressing land use conformance issues in the siting process. The Commission will brief key legislators on the recommendations made in this report and will work with the Administration to identify potential legislative vehicles for implementing the recommended statutory changes to the siting process.

REPORT
ON
IMPROVEMENTS TO THE ENERGY COMMISSION S ENERGY FACILITY SITING PROCESS

INTRODUCTION

The Commission s energy facility siting process was established in the mid-1970s in recognition of the importance of electrical energy to the people and economy of California. The Legislature sought to create a State-level energy planning, forecasting and permitting program to assure that a reliable supply of energy for California was maintained consistent with the need to protect the public health and safety, promote the general welfare, and protect environmental quality (PRC／25001). The State s one- stop energy facility permitting process was designed, in the context of a regulated electric utility industry, to provide time-certain and legally sustainable permitting decisions, which facilitated public participation and protected the environment and public health.

In 1996, the Legislature restructured the State s electricity industry and moved to a competitive market. This changed the owners and operators of the State s electrical generation system but did not diminish the Legislature s commitment to environmental protection and public participation within the permitting process. With the passage of Senate Bill 110 in 1999, the Legislature reemphasized that in the deregulated electricity market, while power plant owners are at risk to recover their investments, it is necessary that California both protect environmental quality and site new power plants to ensure electricity reliability, improve the environmental performance of the current electricity industry and reduce consumer costs (PRC／25009). The bill directed the Commission to evaluate and recommend:

> administrative and statutory measures that, preserving environmental protections and public participation, would improve the Commission s siting and licensing process to insure the timely construction of new electricity generation capacity in California in the deregulated electricity market. [PRC／25543 (b)].

In keeping with the Legislature s direction, the Commission, in preparing this report, evaluated the following four topics:

1. Potential process efficiencies associated with required hearings, site visits, and documents.

2. Impacts on both process efficiency and public participation of restrictions on communications between applicants, the public, and staff or decision-makers.

3. Means for improving coordination with the licensing activities of local jurisdictions and participation by other State agencies.

4. Organizational structure issues, including the adequacy of the amounts and organization of current technical and legal resources. [PRC／25543 (b)].

This report is organized in four sections. The first section, entitled Electricity Restructuring Implications for Energy Facility Siting , discusses the overall effects of restructuring on energy facility siting. The second section, entitled California s Energy Facility Siting Process , provides background information on energy facility siting, including an overview of siting jurisdiction in the State and the Commission s siting process, as well as further information on the four topics required to be addressed by SB 110. The actual evaluation is provided in the third section. Organized by the four topics, the third section describes several issues that were identified during the evaluation process, identifies the Commission s recommendations and provides a rationale for each. A summary of the recommendations is presented in the last section of the report.

ELECTRICITY RESTRUCTURING IMPLICATIONS FOR ENERGY FACILITY SITING

Assembly Bill 1890 (Stats. 1996, Ch. 854) had the objectives of providing Californians with competitive, low cost and reliable electric service [Section 1 (a)]. In restructuring the electricity industry, the Legislature stated its intent to rely on private initiative and market signals, rather than central planning and the utilities obligation to serve to meet future electric demand. Under this new statutory scheme, private developers will determine when and where to build merchant energy facilities and bear the risk of their facilities success or failure. This change, combined with the end of a long period of electric-supply surplus in California and other western states (see Figure 1)[1], is attracting considerable interest among private firms in building new power plants (Table 1). In the restructured electricity industry there is no guarantee that a licensed energy facility will be built, nor of how long it will operate or where its electricity will be sold. Private developers and investors will decide whether the electricity market, in California or other areas served by the interconnected transmission system, will economically support the project s construction and operation. Depending on the electricity market and congestion on the transmission system, electricity generated by a power plant could serve local loads, provide support to the local transmission system, or be used outside California s borders.

Restructuring, however, did not exempt new energy facilities from meeting federal, State, or local environmental, public health or land-use requirements. Proposed power plants and transmission lines must continue to comply with these requirements and mitigate all significant environmental impacts. It also did not eliminate full disclosure of the implications of these projects or the provision for public participation in the decision-making process.

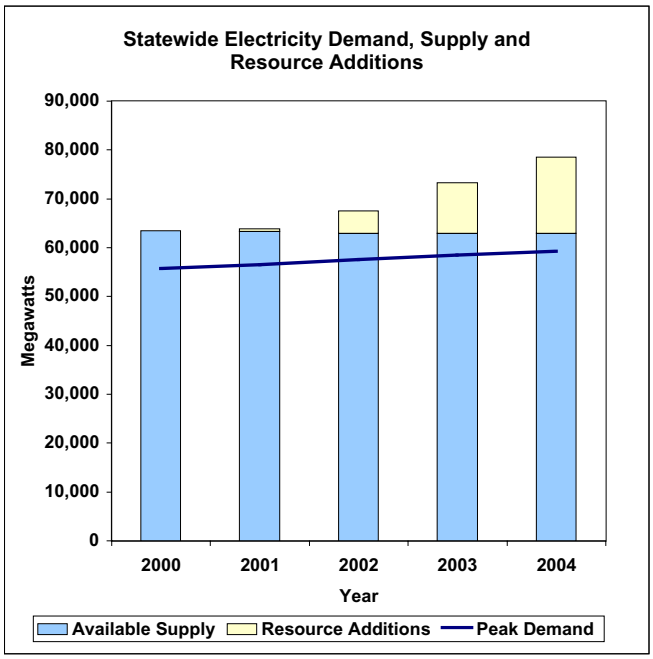
Restructuring, as clarified by SB 110, did make a significant change in the State s energy facility siting process. It removed the requirement for the Commission to perform an integrated assessment of need to serve as a basis for planning and certification of electric transmission lines or thermal power plants. Consequently, the Commission s approval of such projects now depends only on whether the significant environmental impacts associated with a proposed project are fully mitigated and whether the projects comply with all applicable federal, state and local legal requirements. To assure this, the Commission s siting process evaluates the environmental, public health and safety, socioeconomic, community, and reliability implications of a proposed energy facility. It establishes conditions related to each project s construction, operation and eventual decommissioning and monitors compliance with these conditions.

In the restructured electricity industry there is no guarantee that a licensed energy facility will be built, nor of how long it will operate or where its electricity will be sold. Private developers and investors will decide whether the electricity market, in California

[1] In July 1999, the Commission raised concerns over the reliability of the State s electricity system during periods of prolonged peak demand during extended summer heat spells.

Figure 1

Year	Peak Demand	Available Supply	Resource Additions	Cumulative Total Available Supply [4]	Cumulative Resource Additions [3]
2000	55,683	63,401	0	63,401	0
2001	56,476	63,322	500	63,822	500
2002	57,455	62,947	3,963	67,410	4,463
2003	58,382	62,825	6,004	73,292	10,467
2004	59,262	62,849	5,197	78,513	15,664



1 Peak Demand - Numbers are conservative and do not include reserve margins.
2 Supply - Does not reflect constraints & outages but is decreased by interruptible load.
3 Resource Additions - Optimistic based on market clearing price models but conservative based on applicant development plans.
4 15,818 MW (25% of supply capacity) are 30 years or older in 2000 and are at or near their replacement age and represent maintenance and reliability concerns.

TABLE 1 - CALIFORNIA ENERGY COMMISSION APPROVED, CURRENT AND FUTURE POWER PLANT SITING CASES

	Project	Applicant	Size (MW)	Cap. Cost	Location	Filing Date 1/
Approved Siting Cases						
1	Sutter Power (97-AFC-2)	Calpine	500	$300 million	Sutter Co.	12/1997 Approved 4/1999
2	Pittsburg (98-AFC-1)	Enron	500	$300 million	Pittsburg, Contra Costa County	6/1998 Approved 8/1999
3	La Paloma (98-AFC-2)	U.S. Generating Co.	1,043	$500 million	McKittrick, Kern County	8/1998 Approved 10/1999
4	Delta Energy (98-AFC-3)	Calpine & Bechtel	880	$400+ million	Pittsburg, Contra Costa Co.	12/1998 Approved 2/2000
Current Siting Cases						
5	High Desert (97-AFC-1)	Inland & Constellation	720	$350+ million	Victorville, San Bernardino Co.	6/1997
6	Sunrise Cogen (98-AFC-4)	Texaco Global Gas & Pwr	320	$250 million	Fellows, Kern County	12/1998
7	Elk Hills (99-AFC-1)	Sempra & Oxy	500	$250 million	Elk Hills, Kern Co.	2/1999
8	Three Mountain (99-AFC-2)	Ogden Power Pacific	500	$300 million	Burney, Shasta Co.	3/1999
9	Metcalf (99-AFC-3)	Calpine & Bechtel	600	$300 million	So. San Jose area, Santa Clara Co.	4/1999
10	Moss Land Repwr (99-AFC-4)	Duke Energy	1,060	$500 million	Moss Landing, Monterey Co	5/1999
11	Otay Mesa (99-AFC-5)	PG&E Generating Co.	510	$300 million	Otay Mesa, San Diego Co.	8/1999
12	Pastoria (99-AFC-7)	Tejon Ranch	960	$300 million	Kern County	11/1999
13	Blythe Energy (99-AFC-8)	Summit Energy Group	400	$250 million	Blythe, Riverside Co.	12/1999
14	Midway-Sunset (99-AFC-9)	ARCO Western Energy	500	$300 million	Kern Co.	12/1999
15	Contra Costa Repwr (00-AFC-1)	Southern Energy	530	$300 million	Contra Costa Co.	1/2000
16	Mountainview (San Bernardino Repwr) (00-AFC-2)	Thermo Ecotek	1056	$500 million?	San Bernardino Co.	2/2000
Future Siting Cases						
17	Sunlaw 2/	Sunlaw Cogen Partners I	800	$450 million	Southgate, LA Co.	3/2000
18	Potrero Repwr 2/	Southern Energy	520	$300 million	San Francisco Co.	3/2000
19	Combined Cycle 3/		560	$300 million	S.F. Bay Area	5/2000
20	Morro Bay Repwr.	Duke Energy	600	$300 million	Morro Bay, San Luis Obispo Co.	5/2000
21	Antelope Valley 2/	AES	1000	$500 million	Kern Co.	5/2000
22	Combined Cycle 3/		99	$50 million	Kings Co.	5/2000
23	Bay Area Project 3/		600	$300 million	Alameda Co.	5/2000

Notes: 1/ Staff's expected filing date. 2/ Project has been publicly announced. 3/ Project is not publicly disclosed; working with potential applicant. 2/24/00

	Project	Applicant	Size (MW)	Cap. Cost	Location	Filing Date 1/
24	South City 2/	AES	550	$300 million	So. San Francisco, San Mateo Co.	5/2000
25	Peaker 3/		168	$125 million	Imperial Co.	6/2000
26	Combined Cycle 3/		1000	$500 million	Orange Co.	6/2000
27	Long Beach 2/	Enron	500	$300 million	Long Beach, LA Co.	8/2000
28	Combined Cycle 3/		500	$300 million	Imperial. Co.	8/2000
29	Combined Cycle 3/		1000	$500 million	Los Angeles Co.	9/2000
30	Redondo Beach Repwr 2/	AES	1000	$500 million?	Redondo Beach, Los Angeles Co.	11/2000
31	Combined Cycle 3/		400	$300 million	Kern County	12/2000
32	Combined Cycle 3/		500	$300 million	South Coast AQMD	12/2000
33	Combined Cycle 3/		520	$300 million	Contra Costa Co.	1/2001
34	Combined Cycle 3/		?	?	San Deigo Co.	2/2001
35	Combined Cycle 3/		?	?	Kern County	3/2001
36	Combined Cycle 3/		800	$450 million	Riverside County	3/2001
37	Combined Cycle 3/		800	$450 million	Los Angeles Co.	4/2001
38	Combined Cycle 3/		500	$300 million	S.F. Bay Area	5/2001
39	Combined Cycle 3/		130	$65 million	Kern County	6/2001
40	Combined Cycle 3/		500	$300 million	S.F. Bay Area	7/2001
41	Combined Cycle 3		500	$300 million	Central Valley	8/2001
42	Combined Cycle 3/		500	$300 million	S.F. Bay Area	8/2001
43	Combined Cycle 3/		800	$450 million	Los Angeles Co.	9/2001

Notes: 1/ Staff's expected filing date. 2/ Project has been publicly announced. 3/ Project is not publicly disclosed; working with potential applicant. 2/24/00

or other areas served by the interconnected transmission system, will economically support the project s construction and operation. Depending on the electricity market and congestion on the transmission system, electricity generated by a power plant could serve local loads, provide support to the local transmission system, or be used outside California s borders.

The Warren-Alquist Act [Pub. Resources Code ⁄25523 (c)] requires the Commission to find whether each proposed facility complies with applicable State, regional and local laws (e.g., zoning ordinances). The Commission may override those laws only if it determines that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity. Although conformance with the Commission s integrated assessment of need is no longer required for certification, the policies and criteria that may be established in the Commission s integrated assessment of need could provide the basis for making such overriding findings as the Commission determines to be appropriate. When conformance with the Commission s integrated assessment of need was required in the siting process, the existence of established electricity policies and the determination that a proposed facility served those policies rendered an override decision more defensible. In addition, establishment of electricity policies to apply in siting cases provided more certainty to developers as to the circumstances under which the Commission may or may not override. Elimination of the integrated assessment of need may make it more difficult for the Commission to override either State, regional, or local legal requirements, or find that the benefits of a project outweigh associated significant environmental impacts under the California Environmental Quality Act (CEQA) because of a lack of linkage to Commission policies established in furtherance of its other statutory charges.

In the restructured electricity industry, developers should be aware that it will be more difficult for the Commission to make these override findings unless the proposed project provides some unique and demonstrable public benefit. One example of such a benefit may be that the facility has been determined by the California Independent System Operator (ISO) to be critical for maintaining the reliability of the transmission system.

CALIFORNIA S ENERGY FACILITY SITING PROCESS

The electrical system that serves California is a complex, integrated system. It is comprised of approximately 1,000 power plants, 2,500 substations, and 40,000 miles of bulk transmission lines within the State, as well as other facilities located in the Western United States and Canada. Within California there are 5 investor- owned utilities, 26 municipal utilities, 4 irrigation districts, and 5 rural electric cooperatives that supply electricity to customers.

The system for permitting specific power plant or electrical transmission line additions is also complex, but not as integrated. For power plants, the size, type and ownership of the proposed project determine which agency has permitting authority. The questions of what permits are required and who will be the lead agency for transmission line projects is often more difficult because a transmission line will typically cross or affect numerous local, State and federal jurisdictions. Further permitting confusion results if an investor-owned utility, municipal utility, federal agency, or a private company jointly propose the line or propose to build transmission lines side by side. A jointly proposed line or different lines in parallel right-of-ways may have to go through different permitting processes. The current permitting jurisdiction for generation and transmission projects in California is shown in Table 2.

ENERGY COMMISSION S SITING PROCESS

The Energy Commission has siting jurisdiction over thermal power plants with a generating capacity of at least 50 megawatts and all related facilities, which typically include transmission lines, fuel lines, water lines and access roads. The Commission s siting process was originally established in the 1970s as a two-step, multi-year process designed primarily to license the large, complex energy facilities that the utilities were planning to build at that time. The first step of the process, the 12-month Notice of Intention (NOI) was designed as an alternatives site and technology analysis conducted to identify acceptable sites and related technologies for specific power plant proposals. The second step was a 12-month Application for Certification (AFC) process intended to focus on developing mitigation appropriate for a specific site and power plant technology.

Based on current law, most projects permitted by the Commission are now reviewed directly in an AFC proceeding, without the need for an NOI. The six phases of the AFC process include prefiling, data adequacy review, discovery, analysis and decision, as shown in Figure 2. Following approval, the Commission is required to monitor projects until they are decommissioned to ensure they comply with the conditions of approval. Projects between 50 and 100 megawatts, that are not expected to cause any significant environmental impacts, can apply to be exempted from the Commission s licensing process through a Small Power Plant Exemption (SPPE) process.

The Commission s AFC process is a consolidated single-step process, in which all local, State, and to the extent allowed by federal law, federal requirements and

Table 2
ENERGY FACILITY JURISDICTION IN CALIFORNIA

POWER PLANTS

Technology	<50 MW	50+ MW
Natural Gas	MUNI or LOCAL[a]	Energy Commission[e]
Oil	MUNI or LOCAL[a]	Energy Commission[e]
Coal	MUNI or LOCAL[a]	Energy Commission[e]
Nuclear	MUNI or LOCAL[a]	Energy Commission[e]
Geothermal	MUNI or LOCAL[a]	Energy Commission[e]
Solar Thermal	MUNI or LOCAL[a]	Energy Commission[e]
Solar Photovoltaic	MUNI or LOCAL[a]	CPUC, MUNI or LOCAL[a]
Hydroelectric	SWRCB & FERC	CPUC, SWRCB & FERC
Wind	MUNI or LOCAL[a]	CPUC, MUNI or LOCAL[a]

TRANSMISSION LINES AND SUBSTATIONS

Project Type	< 50 kV	50 to 200 kV	over 200 kV
Associated with power plant under Energy Commission jurisdiction.	Energy Commission	Energy Commission	Energy Commission[e]
Investor-Owned Utility proposed[b]	Regulated but exempt	CPUC[c]	CPUC[d]
Muni proposed[b]	Muni	Muni	Muni
Independent proposed[b]	Local	Local	Local

CPUC - California Public Utilities Commission
FERC - Federal Energy Regulatory Commission
IOU - Investor-Owned Utility
LOCAL - Local Agency
MUNI - Municipal Utility
SWRCB - State Water Resources Control Board

[a] Jurisdiction depends on applicant; Municipal Utility for MUNI, and Local Agency for Independent Developer.
[b] Line not associated with power plant under Energy Commission jurisdiction.
[c] CPUC Permit to Construct process
[d] CPUC Certificate of Public Convenience and Necessity process
[e] IOU projects also require a Certificate of Public Convenience and Necessity from the CPUC

Figure 2
APPLICATION FOR CERTIFICATION PROCESS TIMELINE

Time		Phase	Activities
?	_	**Prefiling**	
	_		
-45	+	**Data Adequacy**	- File AFC
	_		- Data Adequacy Workshop
	_		- Data Adequacy Determination
	_		
0	+	**Discovery**	
25	_		- Issues Identification Report
	_		- Data Requests
45	_		- Information Hearing
	_		- Site Visits
	_		- Workshops
	_		
120	+	**Analysis**	- APCD Prelim. Determin. of Compliance
	_		- ISO System Analysis
	_		- RWQCB Determination of Compliasnce
	_		- Agency Comments and Recommendations
	_		- Workshops
165	_		- Preliminary Staff Assessment
	_		- Workshops
	_		- CDFG Biological Opinion
	_		
180	_		- APCD Final Determin. of Compliance
	_		- Prehearing Conference
225	_		- Final Staff Assessment
	_		- Other Parties Testimony
	_		
245	+	**Hearing**	- Hearings
	_		
	_		
305	+	**Decision**	- Presiding Member s Proposed Decision
	_		- Public Comment Period
	_		- Hearing
350	_		- Revised Pres. Mbr s Proposed Decision
	_		
365	+		- Commission Decision
366	_	**Compliance**	

recommendations are considered at one time, and included in a single license. Permitting of other industrial development projects in California is typically sequential, involving multiple, uncoordinated steps for issuing multiple state and local permits. Federal permits usually proceed on a different schedule. Under these uncoordinated processes, review by a dozen or more agencies and permitting times of two to four years are not uncommon for industrial facilities in California.

PROCESS EFFICIENCY

SB 110 requested an evaluation of the potential efficiencies in the Commission s siting process, including those associated with required hearings, site visits, and documents. The Commission typically holds hearings during the siting process for three purposes: 1) to obtain or provide information and comments; 2) to discuss procedures and schedule; and 3) to establish an evidentiary basis for the decision. Informational and procedural hearings are informal in nature, to allow an open exchange of material between the Committee[2] on a project and the various participants. Evidentiary hearings are more formal and loosely follow general rules of evidence. Since the Commission s decisions are to be based on findings of fact and conclusions of law, the purpose of these hearings is to present sworn testimony and cross-examine witnesses. Public comment is also allowed. The number and duration of hearings varies on each project depending on the number and complexity of issues, and degree of agreement on the issues between the parties and the public. Most of the hearings are held in the community nearest the proposed project.

Site visits occur throughout the process for the purpose of educating the decision-makers and various participants; collecting data and information; and evaluating potential impacts, mitigation measures and alternatives.

Several documents are prepared and considered during the Commission s siting process, usually in the following order. The principal ones are:

- § Application for Certification - Filed by the project developer describing the project, providing basic data for use by the Commission and other agencies, identifying the impacts expected and describing recommended mitigation measures.
- § Issues Identification Report — Prepared by the Commission staff and presented at the Information Hearing during the first 30 to 45 days of the process describing the anticipated technical, policy and procedural issues during the case.
- § Preliminary and Final Staff Assessments — Prepared by the Commission staff discussing the existing environmental conditions, the proposed project, applicable laws and regulations, impacts, mitigation measures,

[2] A Committee of two Commissioners is assigned to preside over every siting case. The Committee is responsible for managing the case schedule, conducting hearings to receive comments and evidence, and recommending a decision to the full Commission.

alternatives and recommended conditions of approval. The Final Staff Assessment serves as the staff s written testimony during the evidentiary hearings.

- § Agency reports — Reports with recommendations prepared by other agencies. The primary reports are the Determination of Compliance prepared by the local air pollution control district discussing the project s compliance with air quality rules and the Biological Opinion prepared by the Department of Fish and Game on impacts to protected plants or animals.
- § Written testimony — Prepared by the applicant and intervenors, to be presented at the evidentiary hearings to support various positions.
- § Presiding Member s Proposed Decision — Prepared by the Commission Committee; presents recommended findings and conclusions regarding the proposed project and proposed conditions of approval.
- § Final Decision — Approved by the full Commission, describing the final determination regarding the project, its basis, and associated conditions of approval.

PUBLIC PARTICIPATION AND COMMUNICATION

One objective of the siting process is to provide open, public participation in the decision-making process. The Commission s regulations require that: all hearings, presentations, conferences, meetings, workshops and site visits shall be open to the public. (Cal. Code Regs., tit. 20,/1710); and that: all meetings shall be noticed (Cal. Code Regs., tit. 20,/1718). Notice must be given no less than 10 days in advance of a hearing, meeting, workshop, or site visit. The noticing requirement not only allows the public to be aware of and able to participate in the process, but it also ensures that discussions on substantive issues between the Commission staff, applicant and other parties to the proceeding are conducted in public forums. The Commission has applied the noticing requirements in a conservative fashion. As a consequence, the Commission staff, which functions as an independent party in the process conducts most its meetings with the applicant and intervenors in public.

To facilitate public involvement, the Legislature created the position of Public Advisor within the Commission. The Public Advisor is appointed by the Governor with the responsibility of insuring that full and adequate participation by all interested groups and the public at large is secured in site and facility certification (PRC/25222). The Public Advisor is to ensure that adequate notice is provided, advise individuals and groups on how best to participate in the Commission s process and recommend changes in the process to ensure public participation. The Public Advisor is, however, specifically precluded from serving as an advocate for an intervening party (Cal. Code Regs., tit. 20,/2554).

Members of the public can participate in the Commission s siting process in a number of ways. Most are casual participants that sign up on the Commission s mailing list to receive information about the project and the proceedings, attend some of the hearings and workshops, and may offer oral or written comment. Others,

individually or collectively, may choose to become intervenors and offer testimony at hearings, cross-examine other witnesses and participate extensively throughout the proceeding.

COORDINATION WITH OTHER AGENCIES

As discussed above, the Energy Commission s permitting process is a one-stop , coordinated process, which considers comments from all state and local agencies that would otherwise issue separate permits. The Commission can override any State, local, or regional standards, ordinances or laws if it determines the proposed facility: is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity. (PRC／25525) The Warren-Alquist Act also designated the Commission as the lead agency under CEQA [PRC／25519 (c)].

Depending on the location of a proposed power plant and any related facilities, numerous local, State and federal agencies and the Independent System Operator may be involved in the siting process. In carrying out its siting process, the Commission coordinates with each of the other agencies and the Independent System Operator to reduce duplication, ensure timely participation, and consolidate all comments and permitting requirements within the 12-month process. It requests other agencies and the Independent System Operator to review the application to ensure they have sufficient information to understand the proposed project, evaluate the project s compliance with applicable legal requirements, and make recommendations to the Commission. It also asks other agencies and the Independent System Operator to participate in workshops and present their comments and recommendations, either to the Commission staff for inclusion in the staff s analysis, or at hearings.

The Commission has entered into Memoranda of Understanding with the Air Resources Board, Department of Toxic Substance Control, Water Resources Control Board and the Independent System Operator. The Memoranda serve to coordinate agency roles and activities in order to minimize duplication and ensure timely participation. The Commission has begun working on a similar Memorandum with the Department of Fish and Game.

ENERGY FACILITY SITING TRENDS

Since 1996 and the initial restructuring of the electricity industry, the Commission has received 17 project applications, all for gas-fired combined cycle or cogeneration power plants ranging in size from 320 to 1090 MW (see Table 1). Four of these projects have been approved, to date, with a total generating capacity of 2923 megawatts. The capital cost of these 4 projects is $1.5 billion and they will result in 1411construction and 99 operation jobs. The average permitting time for these

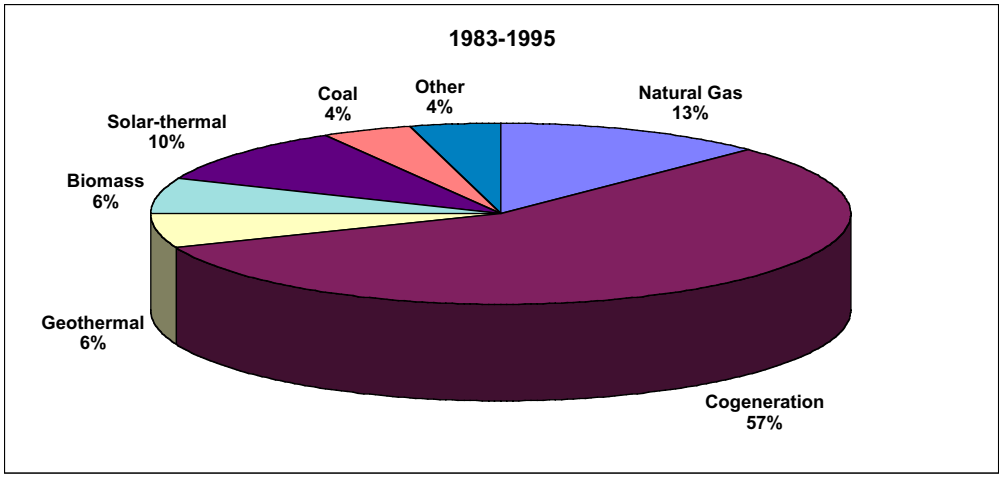
projects has been 13 months. The Commission is currently reviewing twelve projects, and one withdrew to soon after filing to consider modifications.

Most of the new projects are located in close proximity to existing transmission lines and natural gas pipelines. Air emission offsets and water supplies appear to be the next most important siting considerations. In terms of trends, the current projects are larger and less diverse in terms of fuel type than those filed previously with the Commission (Figures 3 and 4). The proposed projects are located in all regions of California, with a significant number in the San Francisco Bay area and the southern San Joaquin Valley (Figure 5). Besides participating in the California market, many of the projects are located to take advantage of electricity markets in southern Nevada, Arizona, northern Mexico and the Pacific Northwest.

Because of the complexity of the regulatory and environmental issues raised by these project proposals, the data adequacy review process to determine the completeness of the applications is generally getting longer, and fewer AFCs are being initially accepted by the Commission as complete (Figure 6). Also, given the economic interests of other competitors and labor unions in the proposed projects, as well as the heightened concerns of the public regarding potential environmental and public health impacts, public participation in the process is increasing and the formal intervention of interest groups is becoming more common. Due to these factors and the need to resolve siting issues, projects are changing more frequently during the process and after licensing has been completed. Given the controversial nature of most of the projects, timely participation of other State and local agencies is becoming more critical in evaluating issues and completing the siting process. All of these factors make the processing of applications more demanding on staff and the Commission, greatly increasing the overall workload of the Siting Program.

Figure 3
POWER PLANT FUEL TYPE COMPARISON

Natural Gas	13%	6
Cogeneration	56%	27
Geothermal	6%	3
Biomass	6%	3
Solar-thermal	10%	5
Coal	4%	2
Other	4%	2
	100%	48



Natural Gas	91%	20
Cogeneration	9%	2
Geothermal	0%	0
Biomass	0%	0
Solar-thermal	0%	0
Coal	0%	0
Other	0%	0
		22

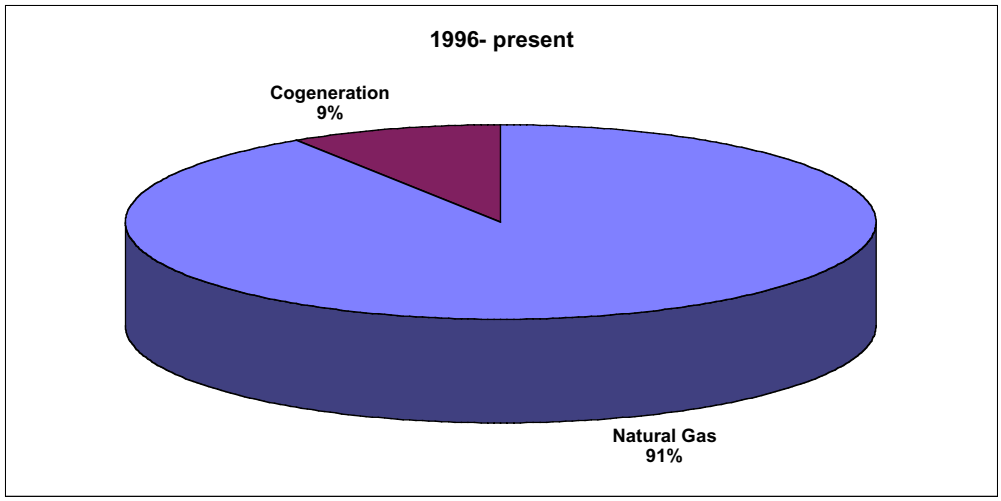
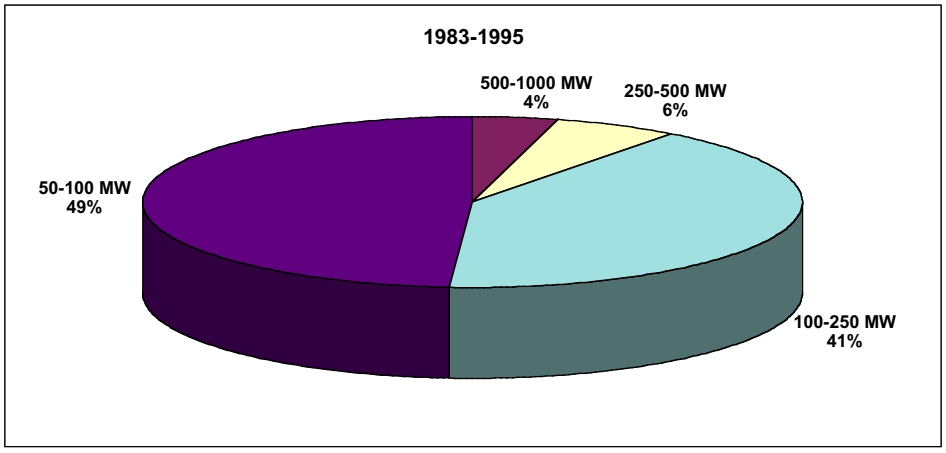
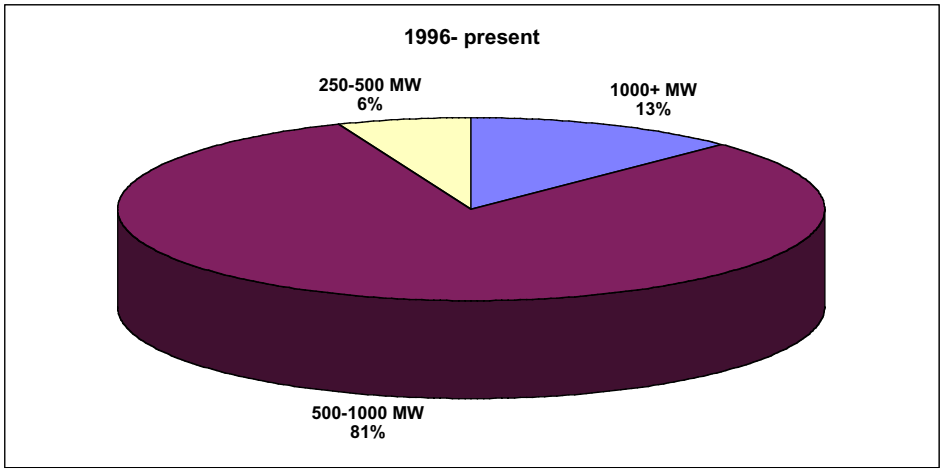


Figure 4
POWER PLANT SIZE (MEGAWATT) COMPARISON

Size (MW)		Number 1983-1995
1000+ MW	0%	0
500-1000 MW	4%	2
250-500 MW	6%	3
100-250 MW	41%	20
50-100 MW	49%	24
	100%	49



Size (MW)		1996-present
1000+ MW	13%	2
500-1000 MW	81%	13
250-500 MW	6%	1
100-250 MW	0%	0
50-100 MW	0%	0
		16



Size (MW)	Number 1983-1995	1996-present
1000 +	0	2
500-1000	2	13
250-500	3	1
100-250	20	0
50-100	24	0
Total	49	16

Size (MW)	Percent 1983-1995	1996-present
1000 +	0%	10%
500-1000	490%	65%
250-500	735%	5%
100-250	4900%	0%
50-100	5880%	0%

Size (MW)	1996-present
1000 +	10%
500-1000	65%
250-500	5%
100-250	0%
50-100	0%

FIGURE 5

CALIFORNIA ENERGY COMMISSION

Current, Expected and Approved Power Plant Licensing Cases

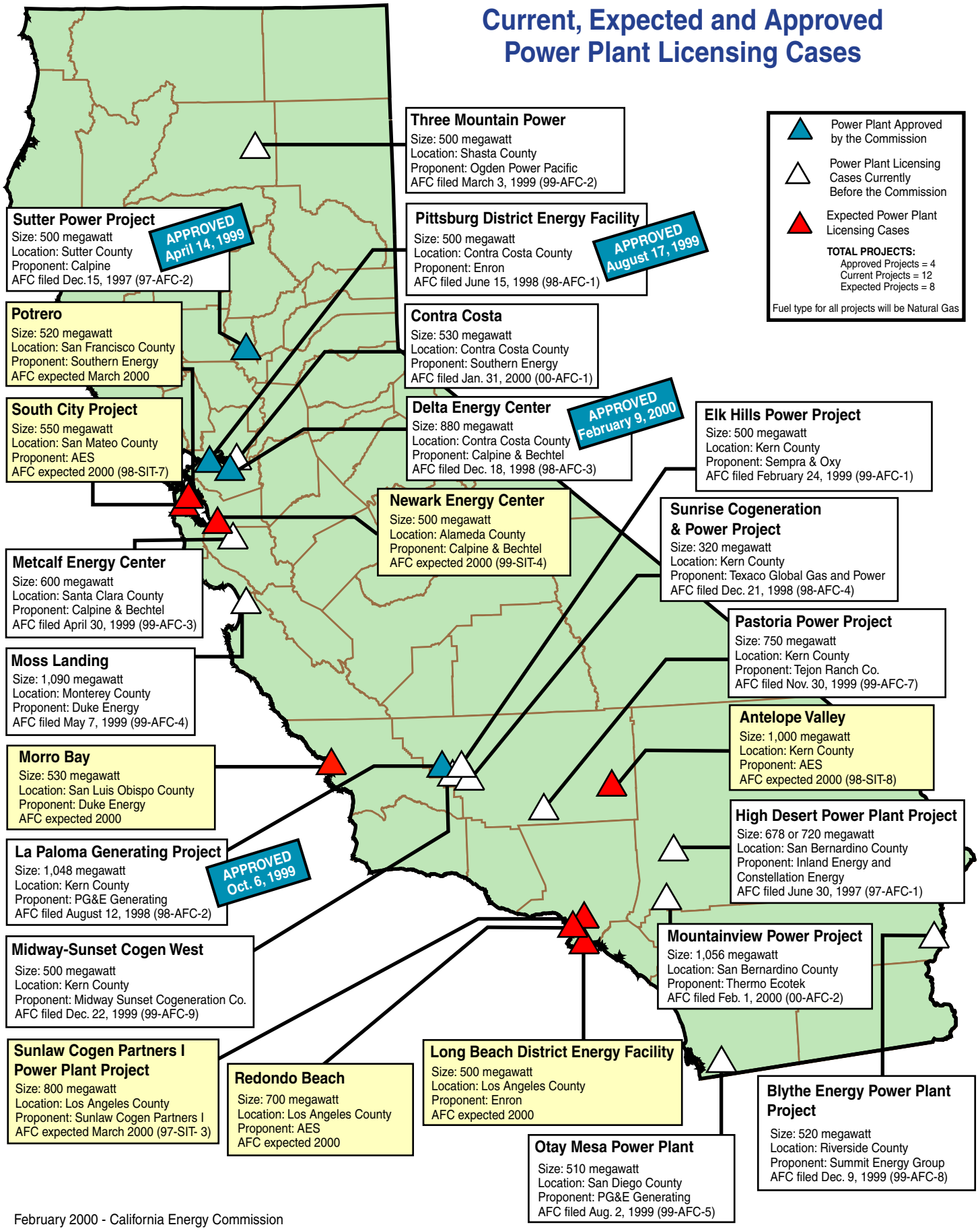


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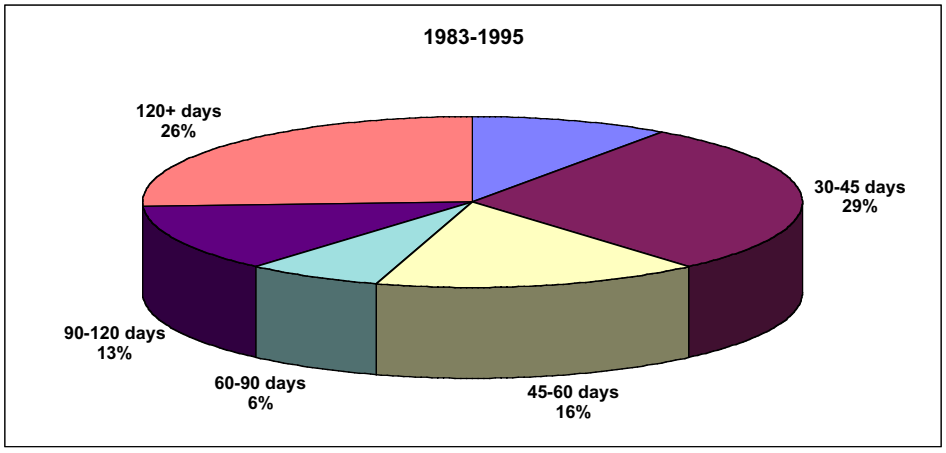
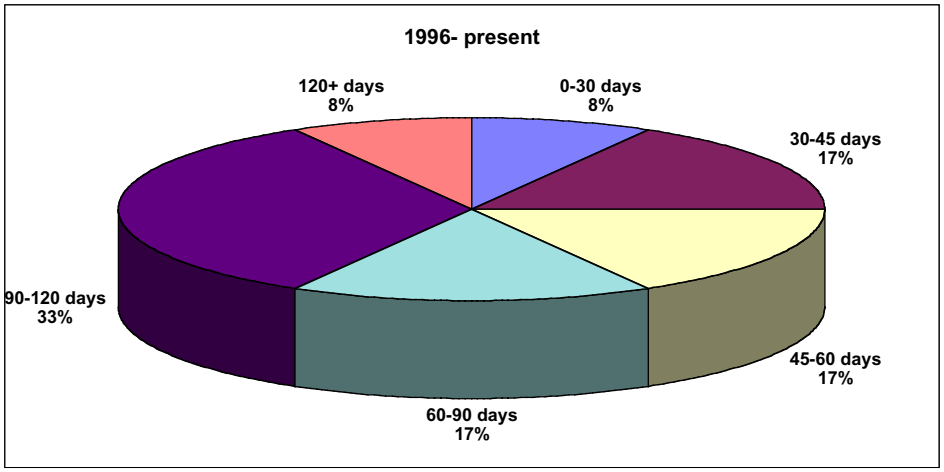
Figure 6
DATA ADEQUACY COMPLETION TIME COMPARISON

Time (days)		Number 1983-1995
0-30 days	10%	3
30-45 days	29%	9
45-60 days	16%	5
60-90 days	6%	2
90-120 days	13%	4
120+ days	26%	8
	100%	31



Time (days)		1996-present
0-30 days	8%	1
30-45 days	17%	2
45-60 days	17%	2
60-90 days	17%	2
90-120 days	33%	4
120+ days	8%	1
	100%	12



Size (MW)	Number 1983-1995	1996-present
1000 +	0	2
500-1000	2	13
250-500	3	1
100-250	20	0
50-100	24	0
Total	49	16

Size (MW)	Percent 1983-1995	1996-present
1000 +	0%	100%
500-1000	3100%	650%
250-500	4650%	50%
100-250	31000%	0%
50-100	37200%	0%

Size (MW)	1996-present
1000 +	100%
500-1000	650%
250-500	50%
100-250	0%
50-100	0%

SITING PROCESS EVALUATION

The Commission routinely evaluates its siting process both by debriefing applicants, intervenors and other agencies following each siting case and by periodically updating its regulations. For this report, the Commission considered input from these debriefings, reviewed the transcripts and notes of the Senate Budget Subcommittee #5 and SB 110 hearings held last legislative session, conducted an open workshop on improvements to the siting process, and held two hearings on specific legislative, regulatory and procedural concepts. The Commission considered other issues raised during this evaluation process, including opportunities to clean-up existing statutes. The issues identified are discussed below as they affect the efficiency of the process, the effectiveness of public participation and communication, the effectiveness of agency coordination, and the effectiveness of the Commission s structure and resources.

In developing the following recommendations for changes to the siting process, the Commission focused first on opportunities for using its existing administrative and statutory authorities more effectively to improve the process. Only where more substantive changes are required does the Commission recommend administrative or statutory changes to improve the efficiency and effectiveness of the siting process in the new electricity market environment.

POTENTIAL PROCESS EFFICIENCIES

To identify potential efficiency improvements, the Commission considered the structure of the process, information requirements, the ability of the process to accommodate project changes, procedural timeframes, analytical procedures and the scope of required analyses. Each of these topics is discussed below.

Issue #1: *Should elements of the siting process that are not currently being used be eliminated?*

Discussion: The Commission s siting process, as currently structured, requires that projects of different size, design and complexity require different levels of review. Very large and complex projects, such as coal and nuclear facilities, currently require a two-step, multi-year process, whereas statutory provisions allow gas-fired power plants to be licensed through a single-step, single-year process. Smaller projects with no significant environmental impacts can be exempted from the Commission s siting process.

Section 25502 of the Public Resources Code requires applicants to submit a Notice of Intent for certain types of projects (e.g., nuclear and coal-fired facilities greater than 100 megawatts). The Notice of Intent is a 12-month process that examines alternative project locations/routes and technologies. Applicants must submit environmental and conceptual design information on at least three sites or routes where the proposed facility can be built. If the Commission approves a Notice of Intent, an

applicant may then file an AFC. All projects currently being proposed for development in California, and those expected to be proposed in the foreseeable future, are exempt from the NOI review process, including all gas-fired facilities as specified by SB 110, and can proceed directly to filing an AFC. Given this circumstance, but recognizing that larger, more complex power plants may be proposed in the future, most project developers and utilities participating in the evaluation stated that no short-term benefits would be realized by eliminating the NOI process, and that such an action may, in the long-term be inappropriate. Some representatives of the public, to the contrary, recommended that the NOI process be applied to all power plants to assure that adequate site and technology alternatives are evaluated in each case. The Commission staff noted that the NOI process has historically been very detailed and that if it is retained, it should be streamlined. Staff also stated that If the NOI is eliminated, there would not be enough time to review a controversial project such as a nuclear or direct-fired coal plant during a typical 12 month AFC process. Consequently, if there is no longer an NOI, the time for AFC decisions on these projects should be extended to at least 18 months.

Public Resources Code／25541 allows the Commission to consider projects from 50 to 100 megawatts in size under a Small Power Plant Exemption (SPPE) in lieu of an AFC. The SPPE process is similar to the process for preparing a mitigated negative declaration under CEQA. Approval of an SPPE exempts a project from the AFC review process, and allows the applicant to separately obtain required permits from other State and local agencies.

To approve an SPPE, the Commission must find that the project will have no substantial impact on the environment or energy resources. If a project has no significant unmitigated impacts, the SPPE can reduce the Commission s review time by four to six months. The SPPE process can, however create a false expectation that the time required to fully permit a project will always be significantly shorter than for an AFC. This has not always been the case since problems have arisen over the adequacy of the filing[3] and the ability of the Commission to make a defensible finding that the project will have no substantial adverse environmental impacts. In addition, after receiving approval of an SPPE, some applicants have encountered delays in obtaining subsequent permits from State and local government agencies. In their comments, most project developers recognized the imperfections of the SPPE process but stated that it should be maintained until a more effective, expedited permitting process is developed.

During the hearing on January 25, 2000, one member of the public proposed that the Commission develop a two-tiered process based on whether projects represent standard versus non-standard designs. Standard projects that comply with certain design and other requirements would be eligible for a 12-month siting process, while non-standard projects would be reviewed in a 24-month process. A number of project developers questioned the effectiveness of such a process, recognizing that

[3] At the present time the Commission does not have any data adequacy requirements for SPPE applications.

site-specific factors can have a significant effect on the issues addressed in a siting process.

Recommendations:

1. The Legislature should maintain the NOI for large, controversial projects that are not currently exempted from it (coal and nuclear).

2. The Commission should maintain the SPPE process for now, but should work with stakeholders to develop an expedited AFC process for facilities satisfying specific criteria.

3. The Commission should establish data adequacy criteria for SPPE applications in the Commission s siting regulations.

4. The Legislature should continue the 12 month licensing process for all natural gas-fired facilities and not move to a two tiered process for standard and non-standard projects. [Issue #1]

Rationale: Virtually all generation facilities currently planned in California are gas-fired and are, therefore, exempt from NOI requirements. In the future, large coal-fired or nuclear facilities could be proposed. Therefore, elimination of the NOI would provide no immediate efficiency benefits to the siting process. If the NOI is eliminated, the AFC decision time for extremely complex and controversial projects, such as nuclear or direct-fired coal, should be extended to 18 months.

The SPPE process provides an opportunity for expedited review for small projects that have anticipated and mitigated all potential significant environmental impacts and have no public controversy. However, it fosters unconsolidated, multiple-step permitting. In addition, environmental issues are sometimes difficult to evaluate and resolve in an expedited manner for projects that are not adequately defined. Based on the Commission s experience in processing AFCs and SPPEs and the input from stakeholders during the evaluation, the Commission should develop a more efficient expedited one-stop siting process to replace the SPPE process. Until this is accomplished, the Commission feels it is appropriate to maintain the SPPE and also initiate a dialog with the stakeholders to develop an alternative process. To establish consistent expectations and use Commission resources efficiently, the Commission will also establish data adequacy regulations for SPPE applications.

Regulatory and environmental issues associated with projects do not always correspond to their basic design characteristics, generating capacity or other physical features. Consequently, we do not believe that a two-tiered permitting process based solely on standard and non-standard design characteristics would prove effective in expediting the siting process. Since most projects currently being proposed would fall in the non-standard category, the Commission would be moving back to the two-step permitting process the Legislature determined should not be used in SB 110.

Issue #2: *Should information and analysis requirements be modified or clarified to improve the efficiency and effectiveness of the siting process?*

Discussion: During the evaluation process, stakeholders raised concerns regarding the need to clarify data adequacy or filing information requirements, provide broader distribution of confidential information, and identify the analytical requirements for some types of projects. The Commission s data adequacy regulations require an applicant to meet a certain threshold of information in its filing before the Commission begins its formal 12-month review of the project, assuming a reasonable level of discovery during the early phase of the AFC process. The purpose of these requirements is to ensure that the Commission, other agencies, and the public have sufficient information to fully understand the project and complete a review within the 12-month process. It is not intended to determine if a project can be approved. Many agencies and the Commission staff have expressed concern that specific, important information is not currently required in data adequacy which results in extended discovery and delays in evaluating a project s impacts and conformance with current legal requirements. The same information requirements need to be applied to all applicants to maintain a level playing field for all participants in the competitive market.

All parties need to understand the definition of certain commonly used terms in the siting process so there is no ambiguity regarding what is being discussed or expected. Issues pertaining to the use of emission reduction credits to offset project air pollutant emissions are often among the most important on a power plant project for local air districts, the Air Resources Board and the U.S. Environmental Protection Agency (USEPA). A delay in obtaining these credits can prolong the licensing process. Therefore, definitions have been proposed for the terms letter of intent and option contract as they apply to securing emission reduction credits.

The Warren-Alquist Act provides a broad definition of the term electric utility to include: ...any person engaged in, or authorized to engage in, generating, transmitting, or distributing electric power by any facilities, including, but not limited to, any such person who is subject to the regulation of the Public Utilities Commission. (Pub. Resources Code／25108). However, the Commission s siting regulations which provide ...the authority to require from any utility information which is specific to the subject notice or application... [Cal. Code Regs., tit. 20,／1716 (g)], does not contain this broad language in reference to meaning of the word utility . Given the change to a competitive electricity market in which regulated utilities no longer propose to build and operate generating facilities, there is a need to clarify the siting regulations to assure the Commission has the authority to require information needed from an electric utility , as defined in Public Resources Code ／25108.

Some intervenors and members of the public recommended that project information currently treated as confidential should be released to the public to allow full disclosure and evaluation. Currently, the Commission allows applicants or other parties to request confidentiality for documents that contain trade secrets, which

would result in the loss of a competitive advantage, or disclose sensitive environmental information (Cal. Code Regs., tit. 20,/2505). This information typically includes information on emission reduction credits (offset sources) that applicants are seeking to purchase, locations of sensitive biological or cultural resources, or proprietary processes. Keeping trade secrets confidential is also recognized under CEQA (PRC/21160). Project developers expressed concern regarding disclosure of this material to competitors while agencies have expressed great reluctance in disclosing the location of sensitive environmental resources.

The regulations currently require that parties submitting comments on a siting case file 12 paper copies with the Dockets Unit and send a copy to everyone on the proof of service list (Cal. Code Regs., tit. 20,/1209). Many participants now have the capability and desire to send and receive information electronically and prefer using this new medium. In most instances, the use of electronic mail can reduce costs and improve the efficiency of disseminating information on a siting case. The Commission s Executive Director currently has discretion under the regulations to allow such electronic filings on a case-by-case basis. (Cal. Code Regs., tit. 20,/ 1209) However, clarification of filing options in the regulations would help to improve the efficiency of the document filing process, while at the same time retaining the legal necessity of filing one paper copy of any document with the Commission.

In the late 1970 s, when most projects had to file an NOI, a provision was established to encourage geothermal development by allowing geothermal facilities to proceed directly to an AFC if a developer could demonstrate the existence of commercial quantities of geothermal resources. In approving several geothermal power plants that bypassed the NOI process, the Commission performed steam-field analyses, using the best information available at the time. Typically, the Commission concluded there were sufficient resources for the life of these facilities. All of these analyses turned out to be wrong. This experience indicates the difficulty in trying to quantify an unknown resource and the potential for significant error.

Recommendations:

1. The Commission should update the data adequacy requirements in the siting regulations.

2. The Commission should add definitions to the siting regulations for Letter of Intent , and Option Contract to provide a common understanding of what applicants may be required to provide to the Commission when securing emission reduction credits.

3. The Commission should add to Section 1716 (g) of the siting regulations broader language consistent with the definition of electric utility found in PRC /25108.

4. The Commission should continue to restrict distribution in siting cases of confidential information regarding proprietary subjects and sensitive environmental sites.

5. The Commission should amend the siting regulations to provide siting case participants the option of filing material electronically.

6. The Legislature should amend the Warren-Alquist Act by deleting requirements for the Commission to perform a steam-field resource adequacy analysis for a geothermal project. The Commission should delete the same requirements from the siting regulations.

Rationale: Establishing clear and reasonable information requirements, and having consistent definitions, improves the likelihood that an AFC will be complete when filed and that the Commission and other agencies will have the critical information needed to complete the review within 12 months. Information that is typically required by all of the agencies should be contained in the application to facilitate these agencies completing their work within the time confines of the 12-month process.

Continuing to limit the distribution of confidential information used in staff s analysis is needed to protect the interests of applicants and to protect and preserve sensitive environmental resources. Limiting this information has not precluded intervenors or the public from being fully informed on potential impacts of the project, or of measures to mitigate those impacts.

Providing options for electronic filing of information can facilitate the dissemination of information to agencies and the public. It should reduce the burden on applicants or other parties for filing multiple copies of documents during the siting review. Some papers will still need to be filed as part of the legal record for public libraries and parties that do not have access to computers.

Because of limited knowledge and uncertainties regarding geothermal reservoir dynamics, previous steam field analyses have had limited value in ensuring there were sufficient quantities of geothermal steam to ensure economic operation of a power plant. In the competitive market, geothermal developers will bear the risk of determining whether their projects have sufficient geothermal resources to sustain the project over its economic life. Available data from the Division of Oil, Gas and Geothermal Resources, combined with appropriate monitoring requirements, is typically sufficient to ensure proper management and conservation of the geothermal resource.

Issue #3: *How can the Commission assure the filing of mature applications and the efficient use of State and public resources in the licensing of generation facilities?*

Discussion: Timely permitting and construction of energy facilities can be hindered because applicants have not made sufficient commitments to obtain control of the

project site or have not adequately developed the design of the project. Site control is not the same as site ownership. Site control can be an option to purchase or lease the land on which a power plant will be located. Currently, applicants are not required to have any type of site control when they file an AFC for a project. This can result in the Commission approving a project that cannot be built if an applicant is unable to obtain site control after certification. None of the stakeholders participating in the evaluation indicated concern with having control over the proposed project site as long as ownership was not required.

Applicants desire flexibility in designing their projects to respond both to the regulatory and environmental issues during the siting process, as well as changes in the market during subsequent project construction and operation. This flexibility is understandable given the total of three years between project proposal and operation. Government agencies, on the other hand, desire a well-defined project, rather than what they consider to be a moving target , when evaluating compliance with existing legal requirements. CEQA requires a clearly defined project as the basis for evaluating environmental impacts. The public also desires to know specifically what will be constructed in their community.

Under the Warren-Alquist Act, the Commission is expected to make a decision on a project within 12 months of the date the application is deemed data adequate unless an extension of the schedule is requested by the applicant. Changes or additions to the project during the siting process create significant problems for the Commission, other agencies, intervenors, and the public since it reduces the time to review the revised project, obtain new input from agencies, and prepare the necessary documents. The Commission has dealt with the problem of project changes in several ways. If the change is intended to mitigate a significant environmental impact, the Commission has usually tried to incorporate it into the process without extending the schedule. If, however, the change is an addition (such as a pipeline) or is due to an oversight and the applicant is unwilling to extend the schedule to accommodate a thorough review of the changes, the Commission has informed the applicant that it may not be able to make an affirmative decision on the project.

Since restructuring, more projects have undergone major changes both during and immediately after the siting process than at any time in the Commission s history. Some of these changes are made in responses to environmental or public concerns raised during the siting process, while others represent business decisions, such as new transmission lines, new gas lines, or new options for water supplies. At the same time, applicants appear less willing to extend the review schedule and, because of reliability concerns, there are currently more pressures on the Commission to make decisions on projects in 12 months or less.

The Commission staff, other agencies, intervenors, and the public recommended that the Commission propose legislation to allow the Commission to extend the schedule if significant changes were made in a project. Project developers and utilities acknowledge the difficulties of accommodating project changes without extending the

schedule, but point out that project changes are often made to address concerns identified by the public or other parties, or to mitigate environmental impacts. At the Commission s January 25, 2000 hearing, the Independent Energy Producer s (IEP) representative recommended that the Commission discipline applicants to come forward with applications that are complete. IEP recommended that the Commission use its existing authority more effectively to manage the process, and not change the law to extend its authority in this area.

Other agencies and the Commission staff expressed a concern that there are an increasing number of changes being proposed by project developers immediately after certification. Some of these are routine as the developer moves from conceptual to final design and makes vendor selections for the major pieces of equipment. Others appear to be efforts to avoid announcing modifications during the more visible siting process or lack of thorough project definition prior to filing. Project developers believe that the Commission s decisions, that normally include a detailed description of the project, add unnecessary time and cost to making insignificant changes and limit their opportunity to make reasonable project changes.

Recommendations:

1. The Commission should add to the data adequacy portion of the siting regulations a requirement that applicants demonstrate site control in the AFC.

2. Rather than proposing changes in the law or regulations at this time, the Commission should include language in its data adequacy determinations on individual cases to deal with changes. This language could state that the determination applies to the project as described in the application and that substantial changes in the project will be reviewed by the Commission Committee and the Committee may adjust the schedule as supported by the evidence.

3. The Commission should work with project developers and agencies to broaden the conditions of certification and project description in the Commission s final decision. The objective of this effort would be to allow changes in the project after certification, without formal amendments, that do not alter the basic project or its emissions and interconnections as approved, but require appropriate review if new environmental or public health and safety impacts are expected.

Rationale: Requiring an applicant to have site control at the beginning of the siting process eliminates the likelihood that an approved project will not be built because of subsequent issues between the project developer and land owner. It avoids wasting the limited resources of the Commission, other agencies and the public. This is unlikely to be an impediment to most projects and does not require ownership of the site.

The Commission recognizes that some flexibility in a project s description is needed during and after the siting process. The applicant, agencies and the public benefit from project changes that represent mitigation or respond to valid concerns raised. Changes made in good faith to respond to these concerns should not cause applicants to be penalized by automatically prolonging the schedule. Sufficient time, however, must be provided for the Commission, other agencies and public to evaluate the implications of changes, particularly if the changes are made because the applicant wished to add a new feature to a project or they had not fully thought out the project before they filed. A schedule adjustment would also include an adjustment of dates for agencies to submit their conclusions and recommendations. Focusing on data adequacy requirements should provide the Commission the flexibility needed to manage schedules while providing clear expectations for applicants regarding the schedule implications of project changes made during the siting process. It should also encourage applicants to communicate with agencies and the community early in project development to identify and resolve concerns that may require changes to the project design or operation.

Changes made after certification for the purpose of avoiding public scrutiny should be strongly discouraged. These changes require reevaluation of issues previously resolved and unnecessarily use Commission and other agency resources. The process should, however, accommodate project changes made in response to finalizing design that do not alter the project s environmental, public health and safety, or other impacts.

Issue #4: *Should time frames be established for procedural requirements to make the siting process more efficient?*

Discussion: There is a high level of participation by the public, and by State and local agencies in the siting process. Currently, there are no time limits placed upon participants in a siting case for filing a request to have a Siting Committee issue its ruling in the form of a written order, or for filing a petition with the full Commission to review a Siting Committee ruling. This creates uncertainty and can delay a proceeding since it allows parties to file petitions late in the process. A failure to obtain information in a timely manner can also delay the proceeding unnecessarily. The discovery portion of the siting process is usually completed by the end of the fourth month. However, there are no specific discovery deadlines prior to the issuance of the hearing order for the start of evidentiary hearings [Cal. Code Regs., tit. 20,/1716 (h)].

Recommendations:

1. The Commission should amend the siting regulations to specify time requirements for requesting Committee rulings and appealing of those rulings to the full Commission.

2. The Commission should amend its siting regulations to specify that all requests for information are to be submitted no later than 180 days from the date the AFC is found to be data adequate. Data requests may be filed later at the discretion of the Committee for good cause shown by the requesting party.

Rationale: More accountability on the part of all participants in the process is needed to assure timely decisions. Imposing a deadline on requests for Committee orders, or appeals of those orders, will provide more certainty in the process, and eliminate the possibility of intentional delay of a proceeding by late filing of a request or petition. Having a date by which all requests for information must be submitted could expedite the review process by avoiding delays associated with the failure to obtain needed information in a timely basis. The Commission s regulations [Cal. Code Regs., / 1716 (h)] currently allow for the Committee to set deadlines on the use of data requests. Data requests submitted after the start of evidentiary hearings must be submitted by petition to the Committee

Issue #5: *Should the Commission use a certified regulatory program to satisfy the requirements of the California Environmental Quality Act (CEQA), or prepare an EIR as part of the siting process?*

Discussion: The Legislature required the Commission to seek certified regulatory program status for its siting process in the late 1970s at the urging of the investor-owned utilities. The use of a functional equivalent process improved the efficiency of the permitting process by allowing the Commission to tailor its regulatory program to statutory requirements and to consolidate documents and integrate analyses. Since the Commission s certificate is in lieu of all other State, local or regional permits or documents, the Commission is required to make a number of findings prior to issuing its certificate. To support these findings the Commission used to prepare multiple documents to discuss environmental issues, impacts and proposed mitigation; socioeconomic issues and proposed conditions; facility design issues and proposed conditions; transmission system operations and reliability issues and proposed conditions; and demand conformance. One of these documents was an Environmental Impact Report. An Environmental Impact Report, however, does not address all of these issues; its contents and format are specified by CEQA. While the certified regulatory program did not exempt the Commission from the intent of CEQA, it did exempt us from specific documentation and process requirements (Cal. Code Regs., tit. 20, /21080.5). In approving the Commission s proposed certified regulatory program, the Resources Agency allowed the Commission to consolidate documents and integrate its analysis on various issues.

In 1981, the Resources Agency approved the Commission s siting process as a certified regulatory program because it met the requirements of CEQA (Pub. Resources Code, /21980.5):

- Utilized an interdisciplinary approach,
- Had protection of the environment a principle purpose of the enabling legislation,

- Had authority to make rules for protecting the environment,
- Required that projects with significant adverse environmental impacts not be approved if there were feasible alternatives or mitigation measures available,
- Required an orderly evaluation of proposed projects,
- Provided for written documentation,
- Required consultation with other agencies,
- Provided written response to significant environmental points raised,
- Required filing of a notice of the decision with the Resources Agency, and
- Required public notice of the project and written documentation.

Table 3 compares the typical CEQA processes and the Commission s siting process.

The primary argument for returning to the traditional EIR process is that most project developers, agencies and the public are more familiar with EIRs than functional equivalent documents. While this is correct, our experience, however, is that project developers and the public readily understand the process similarities and accept the functional equivalent documents. That point was made by the developers during the Budget Subcommittee #5 hearing on February 24, 1999. All of the project developers and intervenors that participated in the hearing supported the Commission s certified regulatory program. In hearings the Commission has held to evaluate improvements to the siting process, a majority of the participants have expressed similar views. Federal agencies have also been able to readily adapt to using functional equivalent documents in conjunction with the National Environmental Policy Act. The flexibility of the functional equivalent process allows us to prepare documents that are more useful to federal agencies than are EIRs.

Some State and local agencies, however, continue to have difficulty with the Commission s certified regulatory program. These agencies are accustomed to having a certified EIR that focuses only on environmental issues available to consider when taking a position on issues such as general plan amendments, rezones, and federal delegated permits. The public has also expressed concern that there is no specific environmental document in the siting process that includes responses to written comments on the Commission s evaluation of the proposed project.

Recommendations:

1. The Commission should retain the use of a certified regulatory program.

2. The Commission should submit its updated certified regulatory program to the Resources Agency for review and approval by December 2000.

3. The Commission should evaluate the use of an initial study format to identify and prioritize issues early, and pare down staff s written analysis on minor issues where there is no controversy or there are no significant impacts.

Table 3

COMPARISON OF CEQA AND THE CEC PROCESSES

	CEQA	CEC
Early Notice	yes	yes
Scope		
Natural	yes	yes
Physical	yes	yes
Social	not required	yes
Safety	not required	yes
Reliability	no	yes
Perspective		
Short-term	yes	yes
Long-term	yes	yes
Cumulative	yes	yes
Document Contents		
Impacts	yes	yes
Mitigation	yes	yes
Alternatives	yes	yes
Public Review	yes - 30 day	yes - 45 day
Public Hearing	not required	yes

Rationale: The use of the certified regulatory program should be continued rather than returning to the EIR model. The functional equivalent approach has worked well and will continue to add value in the restructured electricity industry. Its primary benefit has been and will continue to be one of flexibility and efficiency. It complies with the substantive aspects of CEQA, while allowing the Commission to prepare documents that also address other statutory requirements. The functionally equivalent process provides significant opportunities for public participation in issue identification, analysis and resolution, and an adjudicatory process that allows for open debate of disputed issues. These opportunities are not required in an EIR process, and have reduced litigation and delays in implementing the Commission s decisions.

Although the Commission urges retaining its certified regulatory program, there are some improvements that can be made. The Commission should directly respond to public comments in one of the documents prepared during the process. While not required of a certified regulatory program, this is typically done in final EIRs and helps the public to understand how its concerns have been addressed (see Issue #8).

Finally, CEQA allows for the use of an initial study to help focus the evaluation in a subsequent EIR only on significant adverse impacts. The Commission should consider using this tool to help refine the scope of analyses during a siting case.

After considering these changes, the Commission will submit its certified regulatory program to the Resources Agency for their consideration by December 2000, as required by SB 110.

Issue #6: *Should the Commission modify the scope of the alternatives analysis to reflect the lack of an NOI preceding the AFC process?*

Discussion: With the advent of a competitive electricity market, the demand conformance or need test element of the siting process has been eliminated, and the geographic relationship between project location and electricity end-use, formerly represented by the concept of a utility service area , has disappeared. The public still raises concerns regarding whether individual projects are needed in their community particularly since the project may not provide local benefits, such as reliability. The public also is increasingly raising concerns about the need for a more extensive alternatives analysis in the siting process. Some members of the public that participated in the siting process evaluation, as well as public involved in individual siting cases, have further recommended that applicants be required to propose one or more viable alternatives rather than options that are clearly inferior to the proposed project. The need for an expanded alternatives analysis is one reason some members of the public advocate returning to a two-step NOI and AFC process.

The NOI process involves the evaluation of at least three sites and related facilities, at least two of which must be approved as potential sites for future filing of an AFC for a specific project proposal. Such site approval is not based on a complete CEQA level

environmental analysis and does not grant any development rights . The purpose of the Energy Commission s alternatives analysis in the AFC process is to satisfy the requirements of CEQA by examining a reasonable range of alternative technologies and locations that:

1. offer substantial environmental advantages over the proposed facility; that is, avoid or mitigate the significant adverse impacts caused by the proposed project;
2. may be feasibly accomplished in a successful manner considering the economic, environmental, social and technological factors; and
3. would achieve most of the basic objectives of the proposed project.

The analysis provides information to the decision-makers on a reasonable range of alternatives with respect to environmental matters. It describes the potentially significant impacts of the proposed electrical generation facility, provides a comparative analysis of the major characteristics and environmental effects of each alternative, and identifies those project alternatives that are capable of reducing or avoiding significant impacts. The examination of alternative technologies and alternative locations is not exhaustive but is consistent with the CEQA guidelines.

In addition to the alternative location examination, the analysis includes an investigation of the no project alternative. This analysis discusses the existing conditions as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved based on current plans, consistent with available infrastructure and community services. Additionally, the review identifies and evaluates feasible alternative electric generation technologies along with a smaller project using the same technology as proposed by the applicant.

Recommendation:

1. The Commission should continue the current alternatives analysis approach used in the siting process.

Rationale: The Commission s approach to analyzing alternatives fully complies with the requirements of both CEQA [Cal. Code Regs., tit. 20, ⁄15126 (d)] and the Warren-Alquist Act [Pub. Resources Code, ⁄25540.6 (b)]. It focuses on: 1) a reasonable range of alternatives, 2) alternatives that could feasibly attain the basic objectives of the project, and 3) alternatives that can avoid or lessen significant impacts of the project. The applicant is required to identify their site selection criteria and any alternatives considered for the project.

PUBLIC PARTICIPATION AND COMMUNICATIONS

Public participation is a critical component of the Commission s siting process, both in terms of formal intervention of local interest groups as parties in the process, and as public members participating in workshops, site visits, meetings and hearings. In evaluating ways to make public participation in the process and communications between all participants in the process more effective, the Commission reviewed its noticing requirements, procedures used for responding to public comments, and the manner in which it conducts hearings during the process.

Issue #7: *Should communications between the parties in a proceeding be less restrictive?*

Discussion: The regulations establish an ex parte rule which forces decision-making into the open (Cal. Code Regs. tit. 20／1216). The regulations require that Commissioners, as decision-makers, shall ... avoid any oral or written communication with a representative of any party to any adjudicatory proceeding pending before the Commission including those members of the Commission staff who... have participated or are likely to participate in the preparation or presentation ... concerning any substantive issue involved in the proceeding...

Communications between parties other than the decision-makers during a proceeding are addressed by Section 1710 of the regulations, which requires that ... each and every... presentation, conference, meeting, workshop or site visit... shall be publicly noticed. It allows the applicant to ... formally exchange information or discuss procedural issues with the staff without a publicly noticed workshop. Section 1718 of the regulations requires all meetings to be noticed pursuant to Section 1710. These sections impose limits on the communications allowed between parties to a proceeding outside of noticed meetings. In practice, such limits have only been applied to Commission staff. Other parties have had much greater freedom in communicating.

During the evaluation of the Commission s siting process, a significant amount of time was spent discussing whether the Commission s noticing requirements should be eliminated. There was general agreement that the restriction on communications between the decision-makers and the parties, except in a public forum, is appropriate. However, several issues pertaining to noticing were raised: Should no noticing restrictions be placed on meetings between other parties (applicant, intervenors, agencies) if staff is not present? Should staff be allowed to attend unnoticed meetings with other agencies, with no other parties present? Should staff be allowed to attend unnoticed meetings with other parties as long as agreements on the resolution of specific issues are not negotiated or discussed?

In general, the participants in the evaluation agreed that the Commission s current noticing requirements are overly restrictive and can impede timely exchange of information and discussion of issues on a siting case. The participants reflected that

general restrictions between the parties, except for the Commission staff, should be dropped to allow open communication. The parties expressed a desire to reduce but, at this time, not eliminate noticing requirements on the Commission staff. Although the Commission staff is not a decision-maker, they are the independent party in a siting case and play a critical analytical and advisory role. Consequently, parties should be allowed more freedom to interact with Commission staff to exchange information but negotiations with the staff on positions should be conducted in a public forum.

Recommendations:

1. The ex parte rule requiring public meetings between the Commissioners and all other parties should be continued.

2. The Commission should revise the siting regulations to drop noticing requirements for all parties except staff.

3. The Commission should revise the siting regulations to specify that noticing is not required for meetings between staff and other agencies, with no other parties in attendance.

4. The Commission should revise the siting regulations to specify that Commission staff participation in unnoticed meetings is limited to clarification of information, data exchange and procedural discussions but that negotiation of Commission staff positions on issues is prohibited, except in publicly noticed meetings. [Issue #7]

Rationale: To ensure all parties and members of the public have equal access in the decision-making process, the ex-parte rule requiring public meetings between the Commissioners, their staff, hearing officers and other parties, should be retained.

Noticing of meetings to discuss substantive issues is critical to ensuring the public and all parties can participate in the Commission s siting process and avoid deals made behind closed doors . However, limiting the exchange of information and analyses between the parties to public meetings can reduce the efficiency of the process without any apparent benefit. Because of the Commission staff s unique role to independently analyze the project, recommend mitigation measures and conditions, and subsequently monitor the project for compliance, the noticing requirements should be retained that preclude the staff from negotiating with parties in private. Consequently, the current noticing requirements should be relaxed, except that Commission staff should be prohibited from negotiating settlements on substantive issues with other parties except in a public forum.

Issue #8: *Should the siting process be modified to better respond to public comments?*

Discussion: The Commission s siting regulations require the Presiding Member s Proposed Decision to contain the siting case committee s responses to significant points raised during the proceeding (Cal. Code Regs./1752.5). This is consistent with the requirements for a certified regulatory program under CEQA but is different than the manner comments are dealt with in most final EIRs. Final EIRs are required not only to respond to significant environmental points raised during the review but are required to list the persons providing comments and identify the comments and recommendations received verbatim or in summary (Cal. Code Regs./15132). In practice, most Final EIRs repeat the comments received and provide a response. Since this is not common practice in any of the Commission s documents, some members of the public have expressed the concern that their comments are not heard or considered during the siting process. This concern is further aggravated because some members of the public that are not intervenors do not feel their comments have any weight in the Commission s adjudicatory hearings compared with testimony offered by expert witnesses.

During the evaluation the Commission discussed several options for improving its responsiveness to comments made by the public. They ranged form including all of the comments and responses in the Final Staff Assessment (FSA) or in the Presiding Member s Proposed Decision, to the current practice of only responding to the significant environmental points. There was also discussion of better educating the public on the process — particularly the differences between workshops and hearings - and the ways they can be most effective.

Recommendation:

1. The Commission should include responses to written comments in the FSA and continue to respond to the significant environmental points in the Presiding Member s Proposed Decision.

Rationale: Public participation is very important in the Commission s siting process. Although the Commission may not concur with members of the public on every issue, the public needs to have the opportunity to communicate its concerns and understand that those concerns have been listened to. The Public Advisor, Commission staff and the Committee need to work together to assist the public in effectively participating in the process.

Public participation tends to be greatest at the beginning of a case when the public is in the process of understanding the proposed project, identifying concerns and determining whether and, if so, how the Commission or other agencies are going to deal with those concerns. Since the Commission staff is involved in interactions with the public and other parties during that time, they are in the best position to solicit and respond to comments at that time. Including written comments that are received on the Preliminary Staff Assessment (PSA) in the FSA will provide the public and other

parties with a better understanding of concerns raised and how the staff has considered those concerns. It will also provide the Committee a record of the public s comments. This increased awareness will help public to understand the effects of their input to the initial analysis of a project and allow them to be more effective in focusing their participation during the hearing phase of the process.

Issue #9: *Should the Commission modify the hearing process to further facilitate communication, issue resolution and public participation?*

Discussion: The Commission s decision in a siting case is to be based exclusively on the evidentiary record of the proceeding (Cal. Code Regs./1751). Hearings on the case are held to establish the record, obtaining statements from the parties and obtaining comments and recommendations from other agencies and the public (Cal. Code Regs./1748 and 1754). Some members of the public feel that the Commission s hearing process, which involves direct testimony and cross-examination as well as public comment, is too formal and intimidating. They believe that it limits their ability to communicate with the decision-makers, limits communication between the parties, and reduces opportunities for resolving issues. They have difficulty understanding how they can be effective participants in addressing issues that are important to them in the hearing process.

Recommendations:

1. Notwithstanding its procedural formality, the Commission should continue to use the existing hearing structure to develop the record required as the basis for a decision that is legally sustainable.

2. The Commission should hold informal hearings for uncontroversial issues.

3. The Commission should clarify the role of the public in the hearing process and the weight given to public comments in the decision-making process.

4. To help improve the effectiveness of public input to the siting process, the Commission should hold public scoping sessions on controversial projects early in the siting process.

Rationale: At the root of the public s concern is a feeling that they are not given the opportunity to contribute significantly to the decision-making process once hearings have begun. Making the hearings on uncontested topics less formal should help to facilitate public participation in those hearings. Increasing the use of public scoping sessions early in the process will increase the opportunity for public input at a time when issues are being identified and resolved. Clarifying the role of the public in the hearings will also help them to participate more effectively and will help the decision-makers to better evaluate public input.

COORDINATION WITH OTHER AGENCIES IN THE SITING PROCESS

As part of its consolidated review of energy facilities, the Commission s decisions are facilitated by the input and analyses of other State and local agencies regarding the conformance of a project with applicable laws, ordinances and standards. In some instances, agencies such as the local air pollution control districts are required to submit a report to the Commission. Other agencies reviews of a project can be critical to processing an Application. The agencies that are most frequently involved in a siting case are local planning departments, the Regional Water Quality Control Board, the California Department of Fish and Game, the California Air Resources Board, and the USEPA. While not a government agency, the California Independent System Operator also participates in every siting case that proposes to interconnect to the transmission grid operated by the ISO. Depending on the location or issues associated with the project, additional agencies, such as the California Coastal Commission, might also provide input to the Commission.

Issue #10: How can agencies provide more timely input to the siting process?

Discussion: Section 1714 of the Commission s siting regulations currently requires agencies to submit comments on an AFC prior to the conclusion of the evidentiary hearings. Section 1744.5 requires that local air pollution control districts submit a determination of the proposed project s compliance with applicable district regulations within 180 days from the acceptance of the application. Except for the air districts, there is no specific date provided for submittals from other agencies and consequently the actual extent, timing and completeness of input by other state and local agencies to the evaluation of individual projects varies widely. Incomplete and untimely input from agencies can have a significant effect on delaying the project schedule, and in some cases may deny the Commission critical information that may be needed to evaluate the feasibility of the schedule. It is preferable for agencies to submit comments and recommendations in advance of the evidentiary hearings to avoid delays in closing the evidentiary record and provide sufficient time for the parties to review the agency comments and analysis prior to the evidentiary hearings.

To deal with concerns regarding the timing of agency submittals, clarify roles and responsibilities, and ensure coordination of all permit requirements in the siting process, the Commission staff have entered into Memoranda of Understanding (MOU) with staff of the Air Resources Board, Department of Toxic Substance Control, Water Resources Control Board and California Independent System Operator. Each of these MOUs establishes 180 days as the target date for submittal of agency comments and recommendations. During the past several years, there have been several occasions where agencies have not been able to provide timely input to the commission s process. In most instances this was because they had insufficient resources to perform this work or there had been changes made in the project which required them to redo their analyses.

During the evaluation process, several project developers identified concerns with the timing of agency participation in the siting process. The Commission staff recommended requiring, in legislation, a date of 180 days from acceptance of the application as the target for agencies and the ISO providing final comments and recommendations on the project. One agency expressed concern for such a specific time requirement because of difficulties in obtaining a complete description of the project and necessary data in the application.

Recommendations:

1. The Legislature should modify the Warren-Alquist Act to require agencies to provide comments within 180 days following acceptance of the AFC.

2. The Commission should improve the data adequacy requirements to ensure applications contain information normally required by agencies to make their conclusions and recommendations. (See Issue #2)

3. The Commission should provide agencies sufficient time to evaluate substantial project changes. (See Issue #3)

Rationale: The energy facility siting process administered by the Commission is in reality a state process. Timely participation by all agencies is important to ensuring that all of the issues are addressed within the legislative timeframe. Adding a requirement to the law that all agencies need to submit their final comments on the compliance of the proposed project with applicable legal requirements and submit their recommendations regarding project mitigation and conditions of certification, will help clarify that this is a state mandate binding on all state and local agencies, not just the Energy Commission. A target of 180 days will allow the Commission staff to consolidate all of the agency comments and recommendations into its Final Staff Assessment. If agencies know their input is due to the Commission 180 days after a project is deemed data adequate, they will be more likely to actively participant in the data adequacy review of a project and offer input on project changes. To respond to agency concerns about having sufficient information and time to review the project, the Commission should make the changes in dealing with data adequacy requirements and project changes recommended under Issues #2 and #3.

Issue #11: *When projects are not in conformance with local land use designations, how can local agencies make land use changes, if appropriate, in a timely manner consistent with the requirements of CEQA?*

Discussion: Before making a final decision, the Commission needs to know if a project complies with the land use regulations, including local zoning and general plans. If it does not comply, the Commission has the authority to override the noncompliance if it consults with the applicable agency, attempts to correct or eliminate the noncompliance or makes findings that the project is required for the public convenience and necessity and there are no more prudent and feasible means

of achieving the public convenience and necessity [PRC／25523 (d) and 25525]. The easiest way to correct a land use nonconformity, if appropriate, is for the local land use agency to approve a change in the zoning or general plan. This is a common action performed by local agencies but only after they have either prepared or reviewed a certified environmental Impact report. Since the Commission s process is a certified regulatory program, an EIR is not prepared. If the local agency desires to use the Commission s final decision as the environmental document, it will not be able to make its land use modification until after the Commission s process is completed. If the local agency uses the staff s Final Staff Assessment or the Presiding Member s Proposed Decision, the likelihood of meeting the legislatively mandated 12-month review will be reduced.

This issue is very complex but resolution of it is also very important. The stakeholders spent a lot of time on the issue during the evaluation and while several opinions were offered, there was no clear solution. Most project developers advocated using the Final Staff Assessment as the environmental document for local agencies in considering land use changes. Other participants recommended using the Presiding Members Proposed Decision while others suggested it should not be a major issue. Members of the public observed that the easiest solution is for project developer to propose projects on sites that already have appropriate land use designations. The Commission staff recommended not making any changes at this time but investigating the issue further with the Resources Agency and Office of Planning and Research and holding a focused workshop with both project developers and local agencies before coming to a final conclusion.

Recommendations:

1. The Commission should discuss the issue of CEQA documentation with the Resources Agency and the Office of Planning and Research regarding other agencies decisions pertaining to projects that are the subject of AFCs.

2. The Commission should hold a workshop to further discuss CEQA documentation options with stakeholders and local agencies regarding other agencies decisions pertaining to projects that are the subject of AFCs.

Rationale: There is no clear resolution of this issue. More input is required from the agencies responsible for maintaining the CEQA process and to discuss options with all the stakeholders. In the meantime, the Commission needs to resolve this issue on a case-by-case basis, given the unique circumstances associated with each project.

Issue #12: *How should the ISO be integrated into the siting process?*

Discussion: Adequate transmission system access, capacity and operational capabilities are critical in licensing individual power plants. Assembly Bill 1890 and the Federal Energy Regulatory Commission have given the California Independent

System Operator primary authority over any connection to the transmission system controlled by the ISO. Consequently no new generating unit interconnection or increase in generating unit power output may occur in the ISO-controlled transmission system without the approval of the ISO.

The ISO is a public benefit corporation rather than a state agency, and consequently does not have permitting or CEQA responsibilities for either generation or transmission facilities. The ISO, however, has become a critical participant in the Energy Commission s permitting process for evaluating the reliability and system operation aspects of any project that is interconnected with the ISO controlled grid[4]. Initially, the project developer contracts with the participating transmission owner to prepare a transmission interconnection study. This study identifies any reliability and operational implications or any modifications or upgrades to the existing system that may be required as a result of interconnecting the project. The ISO independently evaluates the study and, in a report submitted in the Commission s permitting process, presents its conclusions on compliance with system reliability standards and the need for additional transmission facilities to accommodate the project. The ISO recommends specific reliability or operational requirements that should be placed on the project. The ISO may also identify the transmission system benefits associated with the proposed project and the impacts on reliability and system operation. The ISO also provides testimony to support the Commission s findings on conformance with applicable laws, ordinances, regulations and standards[5].

The Commission relies on the findings and conclusions of the ISO in its siting process. Since the Commission must identify the environmental impacts associated with the whole project , any downstream facilities required by the ISO for connection of a generating unit to the transmission system must also be evaluated for potential environmental effects in accordance with CEQA. The Commission evaluates the environmental, public health and safety and land use impacts associated with the both the proposed transmission line and any modifications or upgrades needed to the existing system.

Because of its responsibility to ensure the reliable operation of the transmission system, the ISO must review project applications and provide timely input and analysis to the Commission during the siting process. That review function is not currently identified in either the Warren-Alquist Act or the Commission s regulations. The Commission and the ISO, however, recently completed a Memorandum of Understanding clarifying siting case roles and responsibilities.

The relationship between the transmission planning performed by the ISO and the policy and generation permitting performed by the Commission are not clearly

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[4] The ISO controls those transmission lines owned by the investor-owned utilities or approximately 81 percent of the transmission system in California. Approximately 10 percent of the system is owned by Municipal Utilities and 9 percent by federal agencies and are not subject to control by the ISO.

[5] The Energy Commission staff perform all of these functions, in close coordination with the ISO, if the project does not interconnect with the ISO controlled grid.

defined. To avoid duplication of effort and increase regulatory certainty, these functions should be integrated.

Recommendations:

1. The Commission should amend the siting regulations to identify the ISO s responsibilities in the siting process.

2. The ISO should continue commenting on data adequacy, submit comments on the proposed transmission interconnection within 180 days of AFC acceptance (See Issue #10), and testify in hearings, if critical, on transmission system reliability and the relevant transmission study.

3. The Commission and the ISO need to work to establish the relationship between the ISO s transmission planning process and the Commission s policy and permitting processes.

Rationale: Given the responsibilities of the ISO to ensure the reliability of the transmission line system that they operate, it is critical for the Commission to receive their input on projects that effect the ISO operated transmission system. These responsibilities and the requirement for the Commission to consider the ISO s comments are established in an MOU between the two organizations but should also be reflected in the Commission s siting regulations and/or legislation. Both organizations have begun to focus on establishing the relationship between the ISO s transmission planning process and the Commission s policy and generation permitting processes.

Issue #13: *Should the Commission rely on the findings of other agencies, without providing its own independent staff analysis?*

Discussion: Some project developers believe that the siting process could be simplified and made more efficient by eliminating duplication between Commission staff and other agencies during siting cases. Some believe that Commission staff s analysis of a project s conformance with the laws, ordinances, regulations and standards of other state and local agencies is duplicative and unnecessary, and that the Commission s environmental review of the project should rely solely on the comments of other agencies. Other stakeholders disagree, and believe that Commission staff plays an important role in the process as an independent party by assuring a comprehensive review of compliance with legal requirements, assuring a complete environmental analysis, and facilitating agency and public participation in the process.

The Commission staff is required to present an independent analysis of every siting case (Cal. Code Regs./1712.5). During an AFC, the Commission staff prepares a report to assess the environmental effects of the proposed project and the need for additional or alternative mitigation measures [Cal. Code Regs./1742.5 (a)] and to

ensure a complete consideration of the significant environmental issues, safety and reliability matters [Cal. Code Regs./1742.5 (d) and 1743 (b)]. The Commission staff s analysis is to meet CEQA requirements including an evaluation of environmental impacts, mitigation measures, cumulative impacts and alternatives. The Commission relies on other agencies to evaluate whether a project is in compliance with their applicable laws, ordinances, regulations and standards [Cal. Code Regs./1744 (b)]. These agencies also identify measures necessary to bring a project into compliance with their regulations and propose conditions of certification [Cal. Code Regs./1744 (c)]. In all areas the Commission staff is expected to consult, assist and coordinate with other agencies; focus on areas not expected to be considered by other agencies; and ensure that all matters necessary for the Commission s decision are considered [Cal. Code Regs./1742 (c), 1743 (b), and 1744 (c)].

The two areas where applicants feel the Commission staff duplicates the work of other agencies are water quality and air quality. The Commission has Memoranda of Understanding with the State s water and air quality agencies which describe the agencies roles in the Commission s energy facilities permitting process.

With respect to water quality, the nine California Regional Water Quality Control Boards regulate surface and groundwater quality within their jurisdictions under authority granted by the Clean Water Act and Porter-Cologne Water Quality Control Act. The Regional Board s approach to water quality protection is through the designation of beneficial uses, the development of water quality criteria to protect those beneficial uses, and application of those criteria to wastewater discharges through specific and general permits. Other water quality impacts under CEQA may not be addressed by the Regional Board and may require more stringent limitations than those that would be required under Regional Board standards. In addressing environmental impacts and mitigation, the Regional Boards use economic criteria set forth by the Clean Water Act that are different from criteria used under CEQA.

In siting cases, water quality issues associated with power plants are typically closely related to water supply issues. The quality of wastewater from a proposed power plant and the proposed method of disposal, which is acceptable to the Regional Board given their scope of concerns, may lead to impacts that would not be addressed by the Regional Board. As an example, water supply impacts may occur due to the use of more water to meet the Board s discharge criteria. The Regional Boards do not address water supply issues such as impacts from increased groundwater pumping, and impacts on community water supply systems, etc. Their focus is specifically on wastewater discharges. The Commission staff address these issues under CEQA as well as cumulative impacts and alternatives analyses. Close cooperation between the Regional Boards and the CEC is necessary in the permitting of energy facilities to ensure environmental protection, compliance with applicable legal requirements and timely processing of permits, while avoiding duplication.

In the area of air quality, it is not unusual for local, State and federal agencies to be involved. Frequently these agencies have different opinions concerning best available

control technologies, the appropriate ratios to use when determining emission offsets, and a variety of other air quality issues. The Commission staff works to coordinate the efforts of the other agencies on all important issues requiring resolution to see that the Commission Committee receives a complete and objective analysis.

The air district s rules and Authority to Construct permit are not patterned after the requirements of CEQA but are designed to meet the requirements of the Federal Clean Air Act. In complying with CEQA, Commission staff address all potential impacts from a project, not just those aspects of a project that are specifically spelled out in a District s rules. As a result, there is an interactive nature to the work that Commission staff performs with the other air agencies, particularly the local air pollution control district. The districts typically address best available control technology (BACT) and offset requirements while the Commission staff addresses cooling tower, ozone, secondary particulate matter (PM10), and construction impacts. All of these can influence the need for project mitigation. Commission staff also address project site impacts, steady state project impacts, start-up impacts, cumulative impacts, and alternatives analysis. Components of each, particularly alternatives and cumulative impacts, can require consultation with the district or other air regulatory agencies to ensure compliance with rules and regulations as well as mitigation of potentially significant impacts.

The interaction between the Commission staff and other agencies is a function of the different expertise developed over time and at different locations. For example, an air district s analysis of a project often focuses on their rule requirements. Since rules can vary considerably between districts, each district s expertise is critical in addressing the nuances of the rules. Commission staff have an in-depth understanding of the technologies and operations of electrical generation facilities and knowledge of how other districts have dealt with similar issues. A cooperative relationship facilitates more consistent application of rules and regulations throughout the State, ensuring that applicants receive similar treatment no matter where they propose to develop.

While the Commission seeks to avoid duplication, there have been circumstances where the Commission staff have evaluated a project s compliance with another agencies laws, ordinances, regulations or standards. This has occurred where an agency is not performing this work in a timely manner or the Commission staff have been concerned that an agency is either disregarding or misinterpreting its legal requirements such that reliance of that agency s analysis and conclusions may jeopardize the Commission s certification. An example of the latter circumstance was when an air pollution control district was allowing a project developer to use air emission offsets that were not valid. If there are other oversight agencies, such as the Air Resources Board or the USEPA in the case of air quality, the Commission staff will work to get those agencies involved to resolve the issue.

Recommendation:

1. The Commission should continue to seek the conclusions and recommendations of other state and local agencies regarding the conformance of a proposed project with their applicable legal requirements and request agency input on the potential environmental impacts of a project and appropriate mitigation measures.

2. The Commission staff should not duplicate the review of other agencies regarding a project s compliance with applicable legal requirements except where the agencies are not performing the work in a timely manner or where reliance on their analysis may place the Commission s decision in jeopardy.

3. The Commission staff should continue to analyze information showing the potential for significant impacts, despite a project s compliance with applicable legal requirements.

Rationale: As required by law and the Commission s regulations, an assessment of a project s compliance with applicable laws, ordinances, regulations and standards and a CEQA type analysis of environmental impacts, mitigation and alternatives is required on every siting case. The Commission will rely on other agencies to assess compliance with their legal requirements since they have that knowledge and expertise. The Commission staff may assist and coordinate that assessment to assure that all aspects of the facility s compliance with applicable legal requirements are considered, and that agency input to the process is timely and complete. The Commission staff may also become involved if reliance solely on the agency s analysis and conclusions may place the Commission s decision in jeopardy. As requested by the Committee, if agencies find that the project does not comply with applicable legal requirements, the Commission staff may independently verify the non-compliance, and work with the agencies to try to eliminate the noncompliance.

The Commission staff has knowledge and expertise regarding the impacts, mitigation measures and alternatives associated with energy facilities. The Commission staff s environmental analysis of a project needs to include consultation with other state and local agencies to assure that all environmental concerns are identified and that agency regulatory requirements, where feasible, can be used to assure that potential environmental impacts are either avoided or mitigated. Most state and local agency regulatory programs are not designed to comprehensively address all of the environmental impacts associated with a project. Therefore, the Commission staff must identify and evaluate those environmental matters not considered by other agencies, in order to ensure a complete assessment of significant environmental issues and feasible mitigation measures. The incorporation of agency concerns and regulatory requirements in staff s independent analysis provides for a more efficient, timely and effective licensing process.

Issue #14: *When should or will the Commission over-ride significant adverse impacts under CEQA or noncompliance with state or local legal requirements?*

Discussion: Some project developers have requested that the Commission identify the circumstances when it will use its override authority to approve a merchant facility. As discussed above, the Commission has the authority to override significant adverse impacts under CEQA or noncompliance with state or local legal requirements if it deems such action is appropriate. To grant a certificate to a facility that would cause a significant adverse environmental impact that cannot feasibly be mitigated, the Commission must find that the facility has benefits that override the adverse environmental impact. To override noncompliance with local or state legal requirements, the Commission must consult with the applicable agency in an effort to resolve the noncompliance and then determine that the facility: is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity. [PRC／25523 (d)] . The Commission has broad discretion in making this determination.

Historically, the Commission based its determination of public convenience and necessity in large part on the integrated assessment of need. SB 110 eliminated the integrated assessment of need noting that since power plant owners are at risk to recover their investments, it is no longer appropriate for the Commission to make the need determination (PRC／25009). SB 110 stated that it is still necessary for California to protect environmental quality and site new power plants to:

1. Ensure electricity reliability,
2. Improve environmental performance of the current electricity industry, and
3. Reduce consumer costs (PRC／25009).

The Commission currently does not have any criteria regarding overrides. It is monitoring the emerging competitive market and working with the ISO, air districts and other entities on a variety of issues that may define specific needs to be met by energy facilities. Project developers, however, should be aware that it will be more difficult to make the required findings for facilities that are purely merchant facilities and are not distinguishable with respect to the considerations identified in SB 110 from other projects participating in the competitive market.

Recommendations:

1. The Commission should continue to evaluate the appropriateness of overriding significant adverse impacts under CEQA or noncompliance with state or local legal requirements based on the factual record and the desirability for making the required findings on each individual siting case.

2. The Commission should continue to monitor the emerging competitive market and work with other entities, particularly the ISO and their transmission planning process (see Issue #12), to identify the circumstances where energy facilities may be required to meet reliability, environmental, or other public

policy objectives. The Commission should provide guidance on these circumstances as part of its energy policy responsibilities.

Rationale: At this time the Commission does not have any criteria on when it may use its override authority in the restructured electricity industry. As the competitive market develops, the ISO establishes its transmission planning process and identifies system reliability needs and other public policy objectives emerge related to individual energy facilities, the Commission will consider establishing further guidance on override in its policy forums. At the present time however, it will consider the facts and appropriateness of using its override authority on each specific case.

ORGANIZATION AND RESOURCES

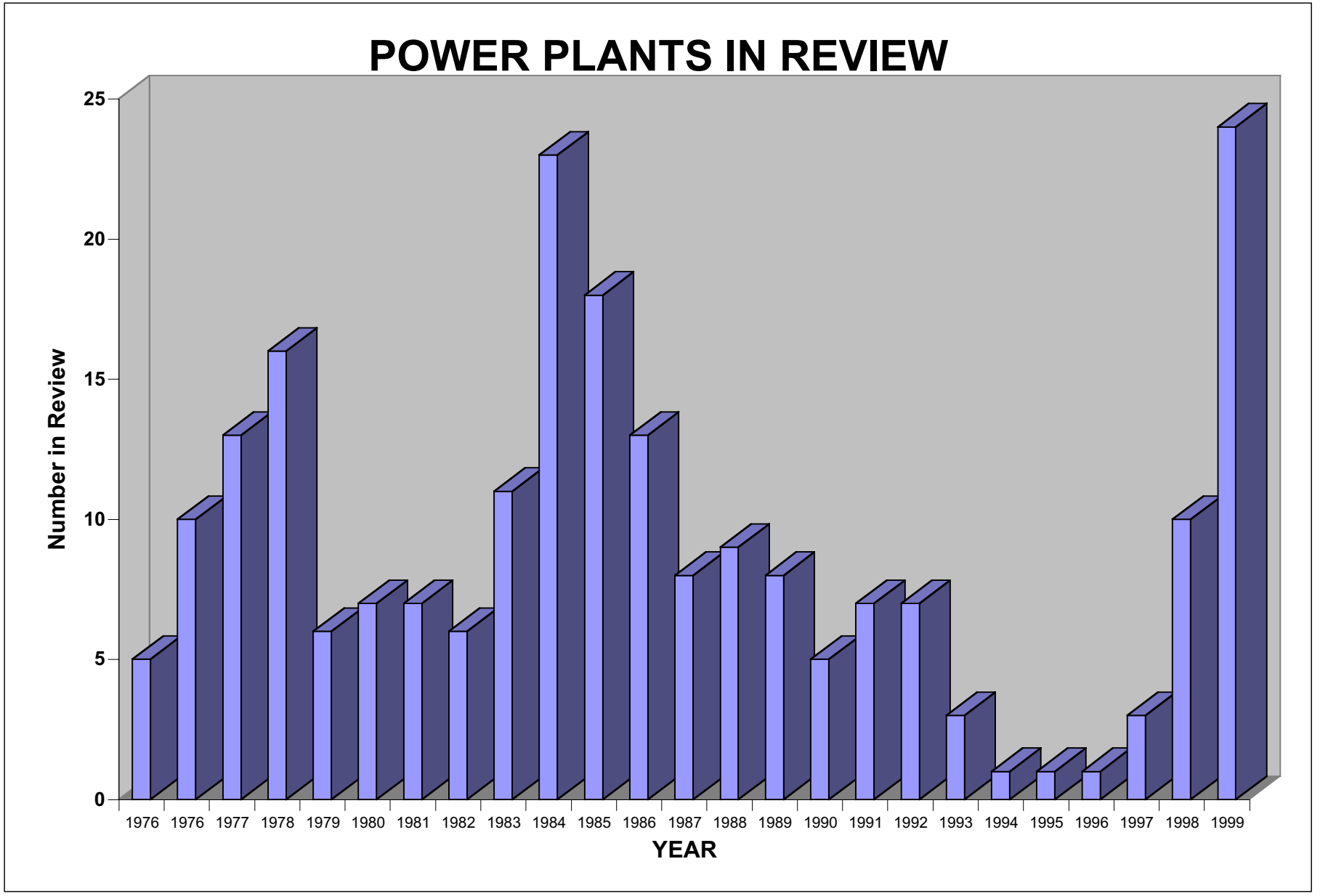
In carrying out its energy facility siting and compliance monitoring functions, the Commission relies on a staff of project managers, attorneys, hearing officers, environmental scientists and engineers. Many of the functions associated with these programs are reactive, responding to applications filed by project developers or certification amendments filed by project owners and operators. Consequently, the siting and compliance workload can be extremely variable. Presently, the Commission s siting and compliance workload is increasing as a result of numerous siting applications being filed by developers that wish to participate in the new competitive electricity market. The availability of trained and experienced resources greatly facilitates the efficiency and effectiveness of producing legally sustainable decisions in the legislated time frame.

Issue #15: *Should additional resources be provided to the Commission for energy facility siting and compliance monitoring?*

Discussion: The Commission has insufficient resources to handle the current and expected energy facility siting and compliance monitoring workload. The causes of the problem are: 1) a significant increase in the number of siting cases and compliance amendments, 2) the increasing complexity of the projects, and 3) a resource allocation that does not reflect actual workload.

In terms of the changing workload, the Commission has experienced peaks and valleys in the number of siting and compliance projects over the past 25 years. On average, the Commission has reviewed all or portions of 8 siting cases a year[6] (Figure 7). As of February 2000, the Commission has already been involved in reviewing 16 cases[7] in Fiscal Year (FY) 1999-00 and may receive 6 to 9 more in the next 4 months. The number of project amendments received during compliance has been steadily

[6] On average four new cases are filed in a year with others carrying over in review.
[7] One of the cases, Morro Bay, has withdrawn their AFC but expects to refile in April, 2000.


POWER PLANTS IN REVIEW
Number in Review
0
5
10
15
20
25
1976
1976
1977
1978
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YEAR

increasing. In FY 1998-99, we received ten amendments. Two-thirds of the way through FY 1999-00 we have already received 9 amendments and are likely to receive 7 more by the end of June, 2000. In addition, we have 3 projects in construction and 2 more likely to be in construction by June. In FY 2000-01, the Commission could be involved in reviewing as many as 32 energy facility siting applications, 16 amendments to existing certificates, and construction of 22 projects. If this occurs, it will be a greater number of siting applications, certification amendments and construction projects than at any time in the Commission s history.

In addition to more projects to be reviewed, more resources are required to review siting cases than before[8]. This primarily due to more applications being filed that are not able to meet data adequacy requirements, more project changes submitted during the siting review, and more intervention.

The Commission currently has insufficient resources to respond to the actual siting and compliance workload. During the FY 1999-00 budget cycle, the Commission informed the Department of Finance and Legislature about the increasing workload and projected that it may be reviewing as many as 26 cases during the fiscal year. Because of the uncertainty, however, the Commission requested only 25 additional positions and $2.4 million in contracts, sufficient to review approximately 18 cases based on our cogeneration workload standards. At the recommendation of the Legislative Analyst, the Legislature approved the 25 positions[9] but only $400,000 in contract funds. This resulted in a baseline of 65.6 permanent positions and $400,000 allocated to energy facility siting and compliance monitoring[10], sufficient to handle 12 to 14 cases depending on schedule and complexity. This is insufficient to review 16 to 25 siting projects as well as compliance amendments.

As mentioned earlier, the Commission s current resource problem is the result of increased workload, increased complexity of the workload and insufficient resources. The increased workload is a fact of the restructured electricity industry and is needed as a partial solution to supply adequacy problems facing California in the next several summers[11]. The increasing complexity of the siting cases can partially be dealt with through the actions identified in Issues #3, 4, 7 and 8. An increase in complexity, however, is also to be expected in an environment that is more competitive; has limited resources such as air emission offsets, water supplies, and transmission capacity; and a public that may not see the relationship between a proposed industrial project and their community. The most apparent solution to the resource problem is to provide the Commission with a level of resources that reflect the actual workload.

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[8] The Commission has spent an average of 8.1 person-years per case, not including Commissioners or their advisors. The resources required to review the first four merchant facilities have averaged 8.6 person-years per case.

[9] At the Legislative Analyst s recommendation, the Legislature established only two-year limited-term positions. The positions were later made permanent in September 1999. Since July 1999, the Commission has filled 23 positions - 10 of these were vacant because of attrition and 13 were positions approved in the budget. Two of the remaining positions are for salary savings and the other eight are expected to be filled by the end of May, 2000.

[10] This does not include the three positions in the Public Advisor s Office.

[11] See *High Temperatures & Electricity Demand*, July 1999; publication # P300-99-004.

This was encouraged by project developers invited to participate in the FY 1999-00 budget hearings[12] who noted that one of the assets of the Commission s siting process was a professional and knowledgeable staff, and who recommended that the Commission s staff resources be increased to respond to the increased workload.

Resolution of the workload problem, however, is not as simple as increasing the number of staff resources. The duration and magnitude of the workload is still uncertain. While it is clear that the number of siting cases is continuing to increase in FY 2000-01, it is not clear whether this trend will continue, stabilize or decline. The compliance workload lags the siting workload by about a year but is currently starting to increase. While the Commission supports maintaining a trained and knowledgeable staff, it would like to avoid hiring more staff resources than can be fully employed for more than two years. The Commission has tried to use contractors to respond to peak workloads that last for two years or less. Consequently, the Commission is currently recommending adding a combination of staff and contract funds in response to the expected FY 2000-01 workload.

Recommendation:

1. To respond to the increasing yet uncertain siting and compliance workload, the Legislature should augment the Commission s budget with a combination of staff positions and contract funds.

Rationale: The current funding is sufficient to review 12 to 14 siting cases, not the 16 to 25 expected during FY 1999-00 or the potential for 32 cases during FY 2000-01. The duration and magnitude of the future workload remains uncertain and to avoid a hire and fire situation, a combination of staff positions to respond to the baseload work and contractors to respond to peak work is preferred.

Issue #16: *Should CEC resources be reduced because the need analysis on siting cases is eliminated?*

Discussion: In accordance with the requirements of the Warren-Alquist Act, the Commission historically performed an analysis of need conformance in each siting case. This analysis enabled the Commission to make a required finding in its final decision regarding the conformity of the proposed facility with the integrated assessment of need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive, of Section 25305 and adopted pursuant to Section 25308 (PRC Section 25523). Subdivisions (a) to (f) of PRC／25305 relate to:

- state and regional impacts of constructing new energy facilities,
- reasonable alternative technologies,

[12] Transcript of the California State Senate Budget Committee meeting of Wednesday, February 24, 1999.

- forecasts of the demand for energy and capacity,
- options for reducing demand growth,
- future demand which balances a variety of economic and environmental factors, and
- probable State and regional capacity additions.

The analytical and policy basis for the integrated assessment of need was contained in the Commission s biennial *Electricity Report*.

In addition to allowing the Commission to make the finding on need conformity, the integrated assessment of need helped provide a basis for a finding of public convenience and necessity if an override of significant adverse environmental impacts or state or local laws was appropriate.

Senate Bill 110 eliminated the concept of need conformance from the Commission s siting process. It had very little impact on the Commissions resources because there has been virtually no resources spent on this analysis in the last six years. In the *1994 Electricity Report*, the Commission responded to the movement to a competitive market by eliminating the requirement for a need test for merchant facilities stating that: ...need conformance tests should not stand in the way of power plant development, if the plant is functioning in a competitive environment, at least as long as new plants are within the amount of capacity found potentially beneficial in the Commission s integrated assessment of need. (page 133) The *1996 Electricity Report* continued this approach and stated that: ...proposed power plants shall be found in conformance with the integrated assessment of need as long as the total number of megawatts permitted does not exceed 6,737. (page 72)

Senate Bill 110 did not, however, end the public interest in the need for a project in their community or discussions of the implications of individual energy facility proposals on the existing electricity system. Members of the public located near proposed power plants will understandably ask if the facility is necessary and if there are alternatives to it. Of the merchant power plants that have been filed with the Commission since electricity restructuring, the public has raised the question of whether the project is needed in all of the most controversial cases.

In addition, if there is an unavoidable significant adverse environmental impact or the project is in non-conformance with a state or local legal requirement, the project applicant, or even another entity such as the Independent System Operator, may request that the Commission override the impact or non-conformance. To override an unavoidable adverse impact, the Commission must determine that the benefits of the proposal outweigh the unavoidable adverse impact. To override a non-conformance, the Commission must determine that the proposed facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity (PRC/25525). While evidence on this issue may be presented by the California Independent System Operator, it is likely that the Commission staff will also be asked to present testimony in these cases.

Restructuring and elimination of the integrated assessment of need could result in increased resource requirements. As more projects are proposed in or near load centers, particularly those replacing existing generators, the level of public controversy, potential for unmitigated significant environmental impacts and potential for non-conformance with local ordinances or standards will be greater. Because the linkage between the Commission s policy report process and the siting process is more tenuous, much of the underlying analytical and policy foundation to respond to the public s concerns; evaluate an applicant s claims of system benefits; and support, when appropriate, override findings, will have to be created in each siting case. If this occurs, our resource requirements will increase.

Recommendation:

1. The Commission is not able to reduce resources previously used to prepare the need analysis on siting cases because these resources have already been redirected or eliminated.

Rationale: The Commission has already redirected or eliminated resources that performed the need analyses prior to 1994.

Issue #17: *Should applicants pay fees for the processing of AFCs?*

Discussion: At the present time, project developers are not charged a fee for filing an Application for Certification with the Commission. Applicants are only required to pay the costs of preparing their application, participating in the process and reimbursing local agencies for their actual costs in complying with any request from the Commission or any permit fees:

Historically, most applications have been reviewed using Commission staff. The Commission has used consultants only to provide special expertise or during periods of peak workload which are expected to last for a short duration[13]. The cost of reviewing a permit application using Commission staff averages $615,000. This assumes an average of 8 person years are required to review an Application for Certification; a cost of $75,000 per person year for salary, benefits and normal operating expenses; and $15,000 for travel to hearings, workshops and site visits.

If Commission staff perform the project management, project secretary, legal counsel, and hearing officer duties and if consultants are used to perform the technical analyses and present expert testimony, the cost of an average AFC would be approximately $895,000. This assumes 3 person-years of staff time performing

[13] During the mid-1980s, the Commission experienced a peak workload as a result of project developers seeking to construct power plants with Standard Offer contracts. The Commission requested and the Legislature approved a combination of additional positions and contract funds to respond to the workload and avoid unnecessary project delay. The State employee unions subsequently took action against the Commission for using contractors rather than State employees.

management and legal tasks at $75,000 per person year, 5 person years of consultant time at $120,000 per person year, and $15,000 for travel. It also includes approximately 0.15 person years of staff time for every person year of consultant time which, based on our experience in the mid-1980s, are needed for contract management, training and quality control.

Given that the capital cost of a 500-megawatt power plant is approximately $300 million, the State s costs of reviewing an application would add less than one-half of one percent to the cost of a new project. The cost to an applicant of designing their project, preparing an application and participating in the AFC process ranges from $1 to 3 million depending on the size, technology and controversy of the project.

The Commission does charge fees for the processing of SPPEs. An applicant sends the Commission a deposit and the money is put into the Special Deposit Fund. Commission staff working on the project identify the project and hours and the time is entered into the Commission s accounting system. Actual staff salary and benefits is derived from the recorded staff time and the accounting system triggers a transfer from the Special Deposit Fund to Commission s fund as a reimbursement.

The question of who should pay for the permitting process was raised by the Legislative Analyst in 1987 and 1993. In evaluating this question the Commission made the following observations:

- Fees can be structured in a number of ways — either fixed based on a standard process or service, or variable based on the actual expense incurred.
- The fund established by fees needs to be carefully managed to maintain an experienced and knowledgeable core staff and to rapidly acquire resources during peak workload periods.
- The Commission s energy facility siting workload is variable with peaks and valleys dependent on the actions of project applicants.
- Fees imposed on all applicants are more equitable than fees imposed on one class of applicants.
- A fee may encourage applicants to provide more timely and complete applications, reduce the number of unnecessary project changes and reduce speculation.
- Investor owned utilities and municipal utilities are able to pass the cost of fees off to their ratepayers while independent power producers are not.
- The Commission s primary client during the permitting process is the public. Having the process paid for by the applicant may, in the perception of some, imply greater influence of the applicant on the outcome.
- All ratepayers benefit from the permitting process regardless of where the proposed facility is located.
- The public and, in particular, the community where the proposed facility is located benefit from the permitting process.

The Commission previously opposed fees primarily because of equity, public perception, and management concerns but has not recently reviewed and updated its position. Restructuring of the electricity industry has eliminated most of the equity concerns. Most of the project developers are private companies or non-regulated utility subsidiaries. The competitive inequity resulting from the utilities ability to pass their costs along to the ratepayers has been eliminated for all but the municipal utilities.

The perceived conflict of interest remains an issue. Most regulatory processes in the state are paid for through application fees. However, in most controversial energy facility permitting cases, the Commission is asked by members of the public whether the applicant is paying for the permit review. When the answer is "no", they frequently express the opinion that they would sooner be paying for the process and know the Commission is impartial than thinking the project developer had some additional influence.

One question that can be asked is: Who benefits from the siting process? The applicants benefit from the process as do the public and the ratepayers. Applicants receive approval to construct and operate an energy facility and, in a competitive market, they are expected to bear the financial risks. Projects permitted in the competitive market are intended to help reduce rates and maintain or improve system reliability for all Californians. The new power plants are also expected to replace older, inefficient and more polluting facilities. Changes in the electricity system can have a statewide impact and the permitting process considers and balances local, regional and statewide policies, issues, and alternatives.

The issue of fees was discussed as part of this evaluation. Some members of the public felt that the applicant should bear the cost of the process while individuals involved in specific siting cases have expressed concern about the Commission feeling an obligation to the applicant if fees were paid. While most project developers are willing to pay fees if it will ensure they receive their decisions in 12 months, some expressed the belief that all ratepayers in the state benefit from the competitive market and the state s siting process.

One concern expressed during the evaluation by the Commission staff regarding fees is how the funds are managed. The Commission s siting program reviews a relatively small number of capital intensive projects and the workload has historically been characterized by a series of peaks and valleys. As applicants and others stated during the FY 99-00 Budget Hearings, it is important that the Commission maintain sufficient trained baseline resources to be able to react when siting applications or compliance amendment are filed. Depending on workload, funds must also be available before applications are filed to hire additional staff or hire contractors[14]. If fees are collected from siting case applicants, it is important to establish a system that is sufficient to fund a core staff during periods of few siting cases that covers such

[14] Three to nine months are required to hire new civil service staff. A similar amount of time is required to hire contractors using the state s contract procedures.

functions as administration, regulation updates, policy work, compliance monitoring and maintaining staff technical expertise. The system also needs to be flexible and responsive to provide adequate resources during heavy or rapidly increasing workload.

Recommendation:

1. If the Legislature decides to charge fees for reviewing AFCs, the Commission recommends they should be managed to allow adequate funding to maintain a baseline level of trained siting and compliance monitoring staff regardless of the workload and to respond rapidly to workload increases with a combination of staff positions and contract funds depending on the duration and magnitude of the workload.

Rationale: The Commission is currently working with the Department of Finance and the administration on a recommendation regarding whether fees should be collected and the management mechanism for collecting and using the funds.

OTHER ISSUES

During the course of the evaluation, several other issues were raised including modifications to the Commission s current jurisdiction.

Issue #18: *Should the Commission s licensing jurisdiction be modified for generating capacity, non-thermal power plants, repowering and transmission lines?*

Discussion: The Commission s jurisdiction for licensing energy facilities is limited to thermal power plants with gross generating capacities of 50 megawatts or greater, and associated electric transmission lines and other appurtenant facilities. Non-thermal power plants (excluding hydroelectric facilities), the repowering of existing thermal power plants that does not result in a generating capacity increase of at least 50 megawatts, and transmission lines that are not associated with power plants under the Commission s jurisdiction are permitted through a multiple-step process involving the separate actions of state and local agencies. This has lead to inconsistencies in the permitting of energy facilities, including a lack of coordination in the planning and permitting of electric transmission lines, which are often critical to the construction and operation of new power plants. The unlevel playing field created by this circumstance is inconsistent with the goals of a competitive electricity market.

The concepts discussed for extending the Commission s jurisdiction included:

- Including non-thermal power plants with a generating capacity of 50 megawatts or greater,
- Lowering the jurisdiction below 50 megawatts,
- Including jurisdiction for all repowering projects regardless of the change in site generating capacity, and

- Consolidating transmission and generation facility jurisdiction.

As a result of discussing this issue with stakeholders in the context of the current and evolving electricity market, the Commission believes that the most critical jurisdictional issue that needs to be addressed at this time is the licensing of transmission lines. Improved coordination of transmission system planning, upgrading of existing lines and construction of new lines is critical to facilitating the entry of new generating facilities into the electricity market. Of the stakeholders participating in the evaluation, the ISO and independent project developers recommend consolidating generation and transmission permitting in the state. The Public Utilities Commission also stated support for this concept during the FY 99-00 Budget Hearings. The investor owned utilities and municipal utilities recommend leaving transmission jurisdiction and generation facility jurisdiction separate. The Commission has previously expressed its support for consolidating transmission and generation facility permitting.

During the discussion of transmission jurisdiction, some of the evaluation participants also recommended that the agency responsible for permitting transmission lines should also have authority to grant eminent domain.

Recommendations:

1. The Legislature should consolidate the permitting of generation facilities and transmission lines within the Commission.

2. The Legislature should include eminent domain authority with the Commission s transmission line permitting authority.

Rationale: The Commission continues to believe that state permitting authority for large energy facilities — both power plants and transmission lines - should be consolidated in one state agency. The benefits of consolidation would include: 1) reducing the fragmentation of the current regulatory process; 2) creating a level playing field for all project applicants; 3) facilitating the consideration of alternatives, 4) ensuring consistency of review; 5) avoiding duplication of the siting expertise needed to evaluate large energy facilities; and 6) increasing the efficiency of agency and ISO coordiantion.

Eminent domain is not an issue to be taken lightly and requires further discussion. It is very likely that the construction of new transmission lines in California required for maintaining system reliability will require the exercise of eminent domain. Conceptually, the public agency responsible for permitting transmission lines should have authority for eminent domain.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

As a result of its evaluation, the Commission believes that the State s energy facility siting process is fundamentally sound and provides an efficient and legally sustainable method for licensing large power plants and related transmission lines in California. None of the stakeholders involved in the Commission s evaluation or participating in hearings before the legislature since restructuring have advocated eliminating or significantly altering the process. The majority of the stakeholders have also urged maintaining the Commission s certified regulatory program rather than returning to a strict CEQA process.

Virtually all generation projects currently being contemplated by the Commission are exempt from the first phase of the two-part process, the NOI, and are licensed in a single 12-month process, the AFC. The only structural change in the process the Commission currently recommends is the development of a more efficient, expedited, single-step licensing process to replace the SPPE. In the meantime the Commission believes that specific data adequacy requirements are needed for SPPEs to improve the effectiveness of the process.

Several opportunities were identified for improving the efficiency of the AFC process in the context of the competitive electricity market. These include updating the information requirements for facility applications, requiring site control, instituting specific process timeframes, and increasing the flexibility for evaluating project changes.

The Commission believes that public participation and communication between all participants in the process can be improved by dropping meeting noticing requirements for all parties except staff, and streamlining the noticing requirements for meetings between staff and other parties. The Commission would still maintain ex parte requirements for decision-makers. More effective public participation can also be promoted by increasing the use of early public scoping sessions to identify and resolve issues, providing specific responses to public comments in staff and Commission analysis documents, and clarifying the role of the public in Commission hearings.

The Commission has also identified a number of changes to improve the timeliness and effectiveness of state and local agency participation in the siting process. These include a specific timeframe for the filing of agency comments, minimizing overlap between agency and staff analyses, improving application filing (data adequacy) requirements to support agency needs, and providing time for agencies to evaluate project changes. The Commission also recommends developing a more timely approach for providing CEQA documentation for local agencies to make land use decisions, where needed, as part of the siting process. It describes how and under

what circumstances the Commission would override regulatory, land use or CEQA requirements in approving project applications.

Based on an evaluation of the present use of its organization and resources, the Commission concludes that additional resources are needed to respond to the increasing siting and compliance workload and that any surplus resources created by the recent elimination of the need analysis in the siting process have already been redirected or eliminated.

The Commission also concludes that, at this time, its permitting jurisdiction should be expanded to include all transmission lines to better facilitate a competitive electricity market.

LEGISLATIVE RECOMMENDATIONS

Specific recommendations for legislative action are:

1. The Legislature should maintain the NOI for large, controversial projects that are not currently exempted from it (coal and nuclear). [Issue #1]

2. The Legislature should continue the 12 month licensing process for all natural gas-fired facilities and not move to a two tiered process for standard and non-standard projects. [Issue #1]

3. The Legislature should amend the Warrant-Alquist Act by deleting requirements for the Commission to perform a steam-field resource adequacy analysis for a geothermal project. The Commission should delete the same requirements from the siting regulations. [Issue #2]

4. The Legislature should modify the Warren-Alquist Act to require agencies to provide comments within 180 days following acceptance of the AFC. [Issue #10]

5. The Legislature should consolidate the permitting of generation facilities and transmission lines within the Commission. [Issue #18]

6. The Legislature should include eminent domain authority with the Commission s transmission line permitting authority. [Issue #18]

7. To respond to the increasing yet uncertain siting and compliance workload, the Legislature should augment the Commission s budget with a combination of staff positions and contract funds. [Issue #15]

REGULATORY RECOMMENDATIONS

Specific recommendations for action by the Commission in its regulations are:

1. The Commission should maintain the SPPE process for now but should work with stakeholders to develop an expedited process for facilities satisfying specific criteria. [Issue #1]

2. The Commission should establish data adequacy criteria for SPPE applications in the Commission s siting regulations. [Issue #1]

3. The Commission should update the data adequacy requirements in the siting regulations. [Issue #2]

4. The Commission should add definitions to the siting regulations for Letter of Intent , and Option Contract to provide a common understanding of what applicants may be required to provide to the Commission when securing emission reduction credits. [Issue #2]

5. The Commission should add to Section 1716 (g) of the siting regulations broader language consistent with the definition of electric utility found in PRCode/25108.

6. The Commission should continue to restrict distribution in siting cases of confidential information regarding proprietary subjects and sensitive environmental sites. [Issue #2]

7. The Commission should amend the siting regulations to provide siting case participants the option of filing material electronically. [Issue #2]

8. The Commission should add to the data adequacy portion of the siting regulations a requirement that applicants demonstrate site control in the AFC. [Issue #3]

9. The Commission should revise the siting regulations to drop noticing requirements for all parties except staff. [Issue #7]

10. The Commission should revise the siting regulations to specify that noticing is not required for meetings between staff and other agencies, with no other parties in attendance. [Issue #7]

11. The Commission should revise the siting regulations to specify that Commission staff participation in unnoticed meetings is limited to clarification of information, data exchange and procedural discussions but that negotiation of Commission staff positions on issues is prohibited, except in publicly noticed meetings. [Issue #7]

12. The Commission should improve the data adequacy requirements to ensure the application contains information normally required by agencies to make their conclusions and recommendations. [Issue #10]

13. The Commission should amend the siting regulations to identify the ISO s responsibilities in the siting process. [Issue #12]

PROCEDURAL AND INTERNAL CHANGES

Specific recommendations for the Commission to make in its procedures and internal practices are:

1. Rather than proposing changes in the law or regulations at this time, the Commission should include language in its data adequacy determinations on individual cases to deal with changes. This language could state that the determination applies to the project as described in the application and that substantial changes in the project will be reviewed by the Commission Committee and the Committee may adjust the schedule as supported by the evidence. [Issue #3]

2. The Commission should work with project developers and agencies to broaden the conditions of certification and project description in the Commission s final decision. The objective of this effort would be to allow changes in the project after certification, without formal amendments, that do not alter the basic project or its emissions and interconnections as approved but require appropriate review if new environmental or public health and safety impacts are expected. [Issue #3]

3. The Commission should retain the use of a certified regulatory program. [Issue #5]

4. The Commission should submit its updated certified regulatory program to the Resources Agency for review and approval by December 2000. [Issue #5]

5. The Commission should evaluate the use of an initial study format to identify and prioritize issues early, and pare down staff s written analysis on minor issues where there is no controversy or there are no significant impacts. [Issue #5]

6. The Commission should amend the siting regulations to specify time requirements for requesting Committee rulings and appealing of those rulings to the full Commission. [Issue #4]

7. The Commission should amend its siting regulations to specify that all requests for information are to be submitted no later than 180 days from the

date the AFC is found to be data adequate. Data requests may be filed later at the discretion of the Committee for good cause shown by the requesting party. [Issue #4]

8. The Commission should continue the current alternatives analysis approach used in the siting process. [Issue #6]

9. The Commission should include responses to written comments in the Final Staff Assessment and continue to respond to the significant environmental points in the Presiding Member s Proposed Decision. [Issue #8]

10. Notwithstanding its procedural formality, the Commission should continue to use the existing hearing structure to develop the record required as the basis for a decision that is legally sustainable. [Issue #9]

11. The Commission should hold informal hearings for uncontroversial issues. [Issue #9]

12. To help improve the effectiveness of public input to the siting process, the Commission should hold public scoping sessions on controversial projects early in the siting process. [Issue #9]

13. The Commission should clarify the role of the public in the hearing process and the weight given to public comments in the decision-making process. [Issue #9]

14. The Commission should provide agencies sufficient time to evaluate substantial project changes. [Issue #10]

15. The Commission should discuss the issue of CEQA documentation with the Resources Agency and the Office of Planning and Research regarding other agencies decisions pertaining to projects that are the subject of AFCs. [Issue #11]

16. The Commission should hold a workshop to further discuss CEQA documentation options with stakeholders and local agencies regarding other agencies decisions pertaining to projects that are the subject of AFCs. [Issue #11]

17. The Commission and the ISO need to work to establish the relationship between the ISO s transmission planning process and the Commission s policy and permitting processes. [Issue #12]

18. The ISO should continue commenting on data adequacy, submit comments on the proposed transmission interconnection within 180 days of Commission acceptance of an AFC (See Issue #10), and testify in hearings, if critical, for addressing transmission system reliability concerns. [Issue #12]

19. The Commission should continue to seek the conclusions and recommendations of other state and local agencies regarding the conformance of the proposed project with their applicable legal requirements and request agency input on the potential environmental impacts of a project and appropriate mitigation measures. [Issue #13]

20. The Commission staff should not duplicate the review of other agencies regarding a project s compliance with applicable legal requirements except where the agencies are not performing the work in a timely manner or where reliance on their analysis may place the Commission s decision in jeopardy. [Issue #13]

21. The Commission staff should continue to analyze information showing the potential for significant impacts, despite a project s compliance with applicable legal requirements. [Issue #13] The Commission should continue to evaluate the appropriateness of overriding significant adverse impacts under CEQA or noncompliance with state or local legal requirements based on the factual record and the desirability for making the required findings on each individual siting case.[Issue # 14]

22. The Commission should continue to monitor the emerging competitive market and work with other entities, particularly the ISO and their transmission planning process (see Issue #12), to identify the circumstances where energy facilities may be required to meet reliability, environmental, or other public policy. [Issue #14]

23. The Commission is not able to reduce resources previously used to prepare the need analysis on siting cases because these resources have already been redirected or eliminated. [Issue #16]

24. If the Legislature decides to charge fees for reviewing AFCs, the Commission recommends they should be managed to allow adequate funding to maintain a baseline level of trained siting and compliance monitoring staff regardless of the workload and to respond rapidly to workload increases with a combination of staff positions and contract funds depending on the duration and magnitude of the workload. [Issue #17]

NEXT STEPS

In concert with the development of this report the Commission has continued, within its authority, to make changes in the application of the siting process. These changes have been based on experiences gained in permitting facilities in the deregulated market, including feedback from project developers and other stakeholders in the process. Consistent with the direction provided in SB 110 regarding the adoption of emergency regulations [PRC 25543 (c)], the Commission has also implemented an

Order Instituting Rulemaking (OIR) proceeding to immediately adopt many of the administrative changes recommended in this report, such as up-dating data adequacy requirements, streamlining meeting noticing requirements, and requiring site control for an application to be complete. The Commission is currently preparing regulatory language for this purpose and intends to adopt the changes to the regulations by May, 2000. The Commission also plans to continue a dialogue with stakeholders through public workshops to develop an expedited permitting process to replace the SPPE; and to develop a more efficient process for providing environmental documentation earlier in the siting process, when needed by local governments to make decisions regarding required project-related land use changes. In addition, the Commission plans to brief key legislators on the recommendations contained in this report and to work with the Administration to identify legislative vehicles to implement the legislative recommendations in the report.

ATTACHMENT A
PARTICIPANTS IN THE SITING PROCESS EVALUATION

Participants in the Siting Committee s evaluation of the siting process included energy developers, utilities, state and local agencies, local community groups and members of the public. The mailing list for the process included 280 names. Those who attended the hearings held during the process and those who provided written comments are identified below.

Participants in the Committee Hearings on the Siting Process

Name	Agency
Allan Thompson	Attorney
Alvin Chan	Los Angeles Dept. of Water & Power
Bill Woods	Calpine Corporation
Bob Musseter	Member of the Public
C. Ouye Jr.	SMUD
C.J. Edens, Jr.	Associated Builders & Contractors
Carolyn Baker	Edson & Modisette
Dan Mostats	Operating Engineers Local # 3
Dennis Champion	Elk Hills Power
Dennis Newman	Occidental of Elk Hills
Dill DiCapo	Livingston & Mattesich
Donna King	Member of the Public
E. Varanini	Livingston & Mattesich
Eileen M. Smith	Solar Development Cooperative
Eva Harvey	Californians for Renewable Energy
Fay Chu	Los Angeles City Attorney
Frank Herrea	Operating Engineers Local # 3
Greg Fuz	City of Morro Bay
Jan Sieving	Occidental of Elk Hills
Jeff Harris	Ellison & Schneider, L.L. P for Calpine
Jeff Miller	Cal-ISO
Jeremy Rowland	URS Greiner Woodward Clylde
Jerome Burke	Yuba City Land Owner
Jesse Frederick	WCI
Jim Adams	California Energy Commission
Joan Joaquin-Wood	Sutter County Land Owner
Joe Rowley	Sempra Energy
John Braun	ABC Central California Chapter
John Grattan	Grattan & Galati
Joseph Paul	Dynesy

Karen Edson	Edson & Modisette
Kerry Willis	California Energy Commission
Kim Heinz	Southern Energy Inc.
Loreen McMahon	Western
Manuel Alvarez	Southern California Edison
Marc Joseph	Adams Broadwell Joseph & Cardozo
Mark Lieberman	Los Angeles Dept. of Water & Power
Mark Seedal	Duke Energy North America
Marty McFadden	Three Mountain Power
Mike Murphy	Member of the Public
Pat Fleming	Sempra Energy
Peter Okurowski	California Environmental Associates
R.F. Williams	WTA
Richard Hyde	Duke Energy
Rick Simon	ENSR
Robert F. Williams	WTA
Robin Larsen	Cal-ISO
Sean O Donoghue	Operating Engineers Local # 3
Shauna Nauman	City of Morro Bay
Steve Cohn	SMUD
Stuart Wilson	CMUA
Sturart Husband	SMUD
William Garbett	Member of the Public

Written Comments Submitted on the Siting Process

Name	Agency
Alan Ramo	Southeast Alliance for Environmental Justice
Derica Moore	Edson & Modisette, for the Independent Energy Producers Assoc.
Dian M. Grueneich	Grueneich Resource Advocates, for the City and County of San Francisco
Ellen Sturtz	San Luis Obispo Resident
Emilo E. Varanini, III	Livingston & Mattesich Law Corporation for Southern Energy Delta, LLC
Eva Harcey	Californians for Renewable Energy
Gary Ledford	Apple Valley Resident
Issa Aljounay	San Jose Resident
Jeffrey D. Harris	Ellison & Schneider, L. L. P., for Calpine
Jerome Burk	Yuba City Land Owner
Jim and Marcella Crockett	Burney Resource Group

Joan Joaquion-Wood	Sutter County Land Owner
Joe Hawkins	Community Health First
Mark D. Patrizio and John T. Guardalabene	Pacific Gas and Electric Company
Michael Boyd	Californians for Renewable Energy
Michael Stanley-Jones	Green Party of Santa Clara
Robert Garbett	Member of the Public
Robert W. Schultz	City Attorney, City of Morro Bay
Robert Williams	San Jose Resident
Ronald D. Rempel, Deputy Director	California Department of Fish and Game
Scott Scholz	Santa Teresa Community Action Group
Steven M. Cohn	SMUD
Sturart E. Wilson	California Municipal Utilities Association